Supreme Court, U.S.
FILED

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No. _____

In the Supreme Court of the United States

BAILLON COMPANY,

Petitioner,

v.

PORT AUTHORITY OF THE CITY OF SAINT PAUL,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE MINNESOTA SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

When a government entity condemns property expressly on behalf of a city, is that condemning authority required to follow the same condemnation procedures set forth in the city charter, which the city would have had to follow if it had directly taken the property?

PARTIES TO PROCEEDING

The parties to the proceeding below were the Petitioner Baillon Company, a privately held Minnesota corporation, and the Respondent Port Authority of the City of Saint Paul.

CORPORATE DISCLOSURE STATEMENT

Baillon Company is a privately held Minnesota corporation.

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PETITION FOR CERTIORARI

The Petitioner Baillon Company respectfully requests that a writ of certiorari be issued to review the order of the Minnesota Supreme Court filed October 16, 2001 denying further review of the Minnesota Court of Appeals' opinion filed on August 7, 2001.

OPINIONS BELOW

The Order of the Minnesota Supreme Court denying further review is unreported and is reproduced in the Appendix at A-1.[1] The Minnesota Court of Appeals' opinion is unpublished and is reproduced in the Appendix at A-2.

JURISDICTION

The Order of the Minnesota Supreme Court denying further review of the opinion of the Minnesota Court of Appeals was filed on October 16, 2001. A-1. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

Section 1 of the Fourteenth Amendment to the United States Constitution provides in relevant part:

> No state shall . . . deprive any person of life, liberty or property, without due process of law.

U.S. CONST. AMEND. VIX, § 1. A-43.

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[1] Petitioner will cite to its Appendix as "A-___."

STATEMENT OF THE CASE

A. Factual Background.

The real property at issue is located at 60 West Fourth Street, in the downtown core of the City of Saint Paul, Minnesota. Petitioner Baillon Company ("Baillon") has owned the Property since 1978. From 1978 to 1986, Baillon operated a building on the Property. In 1986, the building was damaged as a result of nearby construction and was subsequently demolished. Since then, Baillon has operated the Property as a parking lot and has for several years leased the property to Imperial Parking.

The City of Saint Paul, Ramsey County, the Port Authority of the City of Saint Paul ("Port Authority"), Capital City Properties and the Saint Paul Convention and Visitors Bureau Foundation became interested in finding a way to link the downtown skyway system to the River Centre Complex and other buildings with an enclosed pedestrian connection, such as a skyway, tunnel or covered sidewalk. On May 23, 2000, these parties entered into a contractual agreement, which provided:

> ARTICLE 2. PORT DUTIES
>
> 2.1 ACQUISITION OF REAL PROPERTY. The PORT shall acquire, on behalf of the CITY, all permanent and temporary real property ownership and easement rights not owned or controlled by the CITY as of April 1, 2000, necessary for construction and operation of the PROJECT. Upon acquisition of such rights, the PORT shall promptly transfer the acquired rights to the CITY, except for temporary rights

> acquired for construction purposes, which shall be retained the PORT.

A-60. (Emphasis added.) While the agreement clearly directed the Port to act on the City's behalf, the agreement contends that "[n]o partnership, joint venture, or principal-agent is established among the parties under this Agreement." A-62. Under this agreement, the Port Authority sought to acquire the Baillon Property.

As required by the Saint Paul City Charter (*see* A-51-52.), the City gave notice of a hearing regarding the acquisition of the Baillon Property. The hearing was scheduled for February 23, 2000, in the City Council's Chambers. A-47. However, a week before the scheduled hearing, Baillon received a notice from the City that stated:

> It has been brought to our attention that the Saint Paul Port Authority intends to proceed with the acquisition of property rights necessary to construct the above-mentioned pedestrian tunnel, for that reason the Public Hearing for the City of Saint Paul [to] proceed with the acquisition of 60 Fourth Street West **will not** take place on Wednesday, February 23, 2000.

A-48. (Emphasis original.) Subsequent to this cancellation, no public entity has ever held a public hearing. Neither Baillon nor the public were given a chance to present, at a public hearing, their objections to the proposed condemnation, a right they were and are guaranteed by the City Charter.

Prior to the City providing notice of the public hearing – and without notice to Baillon – the Board of

Commissioners of the Port Authority adopted Resolution No. 3818 on January 25, 2000. A-41. The Resolution authorized the acquisition of the Baillon Property, on behalf of the City of Saint Paul, and directed its staff and legal counsel to enter into negotiations with the owner of the Property. *Id.* The Board also authorized its legal counsel to acquire the Property if negotiations did not produce an agreement on the transfer of the Property. *Id.*

The Port Authority made an offer to acquire the property for $390,000. A-4. Baillon rejected the offer, believing that it did not have an appropriate opportunity to oppose the condemnation at a public hearing. The Port Authority then initiated a condemnation proceeding under the Minnesota "quick take" statute, Minn. Stat. § 117.042. A-33.

B. Proceedings Before the Ramsey County District Court.

Baillon challenged the condemnation in the district court arguing, *inter alia*, that its due process rights had been denied by the cancellation of the public hearing. The district court heard arguments on January 26, 2001. Baillon requested an evidentiary hearing, which the court denied. No testimony was taken, only a limited number of documents were given to the court, and the proceeding lasted only an hour.

Before the district court, the Port Authority provided the court with three resolutions passed by the Saint Paul City Council. Port Authority counsel asserted that the resolution adopted October 6, 1999 was evidence that Baillon had received a public hearing on the condemnation of its property. On the contrary, the resolutions provided only that

the general project could go forward. The City never provided Baillon with notice of hearing to approve the condemnation of its property.

The district court summarily approved the condemnation petition without affording Baillon Company a hearing on the merits of the Petition. A-13-22. Although it acknowledged that Baillon was not given a public hearing, the district court determined that the Port Authority's Resolution No. 3818 was sufficient to allow it to proceed with the condemnation. A-20-21. The court cited no documents other than the Resolution when it found that the taking was necessary for the "betterment of the Port Authority's downtown economic development district [and to] facilitate the skyway connection of numerous buildings owned and/or financed by the Port Authority." A-18. The district court ignored Baillon's argument that it was entitled to an evidentiary hearing or trial regarding the issues Baillon raised.

Upon receiving the court's orders approving the transfer of title and appointing commissioners, Baillon requested leave under Rule 115.11 of the Minnesota Rules of Practice for the District Courts to file a motion for reconsideration. Baillon asserted that the district court erroneously stated that Baillon did not object to the granting of the Petition. Baillon also asserted that it was denied an appropriate evidentiary hearing or trial on the issues in question. The district court denied the request and asserted that all questions before it involved questions of law and not fact. On February 28, 2001, Baillon timely served and filed its notice of appeal to the Minnesota Court of Appeals, seeking review of all the issues raised in the condemnation proceedings.

C. The Decision of the Minnesota Court of Appeals

The court of appeals affirmed, holding that Baillon (1) did not establish that an agency relationship existed between Saint Paul and the Port and (2) received an adequate hearing, although it was not allowed to present witnesses in opposition to the condemnation.

D. The Decision of the Minnesota Supreme Court.

Baillon petitioned the Minnesota Supreme Court for discretionary review of the court of appeals' decision. *See* Minn. R. Civ. App. P. 117. On October 16, 2001, the court issued an order declining to review the case. Baillon now submits this Petition to this Court.

REASONS FOR GRANTING THE WRIT

I. A PORT AUTHORITY SHOULD NOT BE USED AS A VEHICLE TO AVOID A CITY'S OBLIGATIONS TO CONDUCT A PUBLIC HEARING BEFORE TAKING PROPERTY.

"There is nothing peculiar about litigation between the government and its citizens that should deprive those citizens of a right to be heard in a condemnation proceeding against their property." *Walker v. City of Hutchinson*, 352 U.S. 112, 117 (1956). Yet the decision allowed to stand by the Minnesota Supreme Court improperly allows a City to avoid the condemnation procedures in its City Charter by entering into agreements with other government entities which contractually obligate the entity to condemn property on the City's behalf, and at the same time disclaim any agency relationship. This type of arrangement allows government to "have its cake and eat it too" and is pure legal fiction, which works to deprive property owners of their due process rights. This Court should issue a writ of certiorari to carefully consider the proper limitations on eminent domain powers when government entities act together to take private property.

A. A Public Hearing Was Required Under the Saint Paul City Charter.

The Port Authority's Petition to "quick take" the Baillon Property specifically states: "That the Port Authority should acquire, on behalf of the City of Saint Paul, all permanent and temporary real property ownership and easement rights not owned or controlled by the City as of April 1, 2000, . . ." A-35. (Emphasis added.) Further, that same paragraph states that the determination to acquire on

behalf of the City was the result of a contractual agreement entered into effective as of May 23, 2000. That agreement specifically states that "the PORT shall acquire, on behalf of the CITY" the Baillon Property and "the PORT shall promptly transfer the acquired rights to the CITY." A-60. (Emphasis added.)

By the Port Authority's admissions in its own documents, it was acting as a limited agent or proxy for the City in taking of the Baillon Property. There is no dispute that the City, not the Port Authority, intends to permanently acquire the Baillon Property. Upon acquisition, the Port Authority – as agent of the City – is obligated to transfer the property immediately to the City. In effect, the Port Authority is acting as the City in this process. Accordingly, the Port Authority should be required to abide by the same due process procedures that the City would have had to follow had the City condemned the property directly, namely the granting of a public hearing.

Section 13.01 of the Saint Paul City Charter permits the City of Saint Paul to "acquire by purchase, gift, devise, condemnation or exchange, or in any legal manner, in fee or such lesser estate as the counsel deems necessary, any property either within or without its corporate boundaries, needed by it for any public use or purpose." A-49. Section 13.03.1 states as follows:

> (1) Improvements and acquisitions shall originate upon petition of the property owners affected or upon the council's own initiative as the council may, by administrative ordinance, prescribe. Before adopting the final order provided herein, the council shall, by

> resolution entitled "preliminary order," set a time and place for a public hearing thereon twenty (20) days or more after the passage by the council and approval by the mayor or council override a mayoral veto of the resolution.

A-51. (Emphasis added.) Furthermore, Section 13.03.2 states as follows:

> (1) At the hearing, or at any adjournment thereof, the council shall hear all interested persons. It may thereafter discontinue, modify or adopt the proposal by a resolution entitled "final order."
>
> (2) The "final order" shall state the extent and kind of improvement to be made, the property or interest to be condemned, the estate to be acquired and direct the proper city officers to proceed with the improvement and/or the condemnation.

A-51-52. (Emphasis added.) It is undisputed that this procedure was not followed by either the City or the Port Authority acting on the City's behalf.

The decision allowed to stand by the Minnesota Supreme Court renders the condemnation procedures and due process safeguards set up by the Saint Paul City Charter meaningless. The citizens of Saint Paul, in approving the Charter, provided for a public hearing in all condemnation

cases. The clear language and intent of the Charter has been totally frustrated by the decisions of the Minnesota courts.

Thus, this Court should not allow a port authority to be used as a vehicle to avoid a city's obligations to conduct a public hearing before taking property, as has happened in this case. It is clear that the City of Saint Paul cannot directly condemn property without giving property owners their right to a public hearing because the City Charter guarantees that right. It therefore follows that the City should not be allowed to indirectly deprive property owners of their right to a public hearing by using the artifice of an agent or proxy, such as the Port Authority, to carry out the condemnation on the City's behalf. The failure to give Baillon a public hearing was a violation of due process and was fundamentally unfair.

The Minnesota Court of Appeals' determination that Baillon did not sustain its burden of proof that an agency relationship existed between the City and the Port should not discourage this Court from issuing its writ on this important question. The court of appeals' decision does not make sense because Baillon was never given an opportunity to carry its burden of proof. The district court denied of Baillon's request for an evidentiary hearing and cut off any opportunity to prove the existence of an agency relationship.

This court has recognized that the due process clause requires a meaningful hearing appropriate to the nature of the case. *See Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1956) ("Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate

to the nature of the case.") (Emphasis added). This is not a case were a government authority has followed its condemnation procedures and those procedures have been found constitutional. *See, e.g., Hawaii Housing Authority v. Midkiff*, 467 U.S. 229, 243 (1984). This is a case where the government authority has disregarded its own condemnation procedures. The appropriate hearing was a public hearing before the Saint Paul City Council. Baillon's due process rights were violated when no such hearing was held. Baillon's due process rights were also violated when it did not receive a meaningful hearing before the Ramsey County District Court.

Baillon's appearance before the Ramsey County District Court was less meaningful than a summary judgment hearing. In a summary judgment proceeding, all inferences are construed in favor of the non-moving party. In this case, the agreement between the City and the Port Authority specifically directs the Port Authority to acquire property "on behalf of the City" and then turn it over to City. The same document states that the agreement should not be construed as creating an agency relationship. A-62. This raises at least a genuine issue of fact regarding whether an agency relationship exists. Baillon, however, never had an opportunity to examine witnesses from the City or the Port Authority regarding the scope of the relationship and the ambiguity of the agreement. Despite this fact, both the district court and the court of appeals held that Baillon had not carried its burden to prove an agency relationship. The courts never gave Baillon a chance and they violated Baillon's due process rights.

The fact that the Port Authority is not required to conduct a public hearing when exercising its eminent domain powers in its own right is irrelevant in this case because the

Port Authority was not acting in its own right. Here the Port Authority – by its own admission – was acting on behalf of the City. While the Port Authority could have condemned the property in its own right, it instead chose to enter into a contract with the City to act on the City's behalf. The Port Authority, therefore, was limited by the provisions of the City Charter. Baillon seeks reversal of the Minnesota Supreme Court's order with instructions that the condemnation petition fails because no public hearing as required by the Saint Paul City Charter has been held on the condemnation of the Baillon Property.

Whether a city can delegate the task of condemning property on its behalf to another government entity with less burdensome condemnation procedures is a matter of first impression for this Court and will recur as government entities increasingly seek to partner with one another on major projects. Baillon respectfully requests that the Court issue a writ of certiorari to the Minnesota Supreme Court.

CONCLUSION

This case presents an important question whose resolution by this Court will have significant impact on eminent domain cases and will greatly affect the constitutional rights of property owners in those proceedings. The decision allowed to stand by the Minnesota Supreme Court provides cities with a loophole to deprive landowners of their rights to public hearings in condemnation cases. This Court's guidance is needed on whether more burdensome statutes, regulations or ordinances can be avoided by one government entity through delegating condemnation of property to less burdened government entities.

Respectfully submitted,

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DATED: January 14, 2002

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STATE OF MINNESOTA

IN SUPREME COURT

C6-01-387

Port Authority of the City of St. Paul,

Respondent,

vs.

Baillon Company,

Petitioner,

Imperial Parking, Inc., et al.,

Respondents Below.

ORDER

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the petition of Baillon Company for further review be, and the same is, denied.

IT IS FURTHER ORDERED that the request of the Port Authority of the City of St. Paul for cross-review be, and the same is, denied.

Dated: October 16, 2001

BY THE COURT:

/s/

Kathleen A. Blatz
Chief Justice

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2000).

STATE OF MINNESOTA
IN COURT OF APPEALS
C6-01-387

Port Authority of the City of Saint Paul, petitioner,
Respondent,

vs.

Baillon Company,
Appellant,

Imperial Parking, Inc., et al.,
Respondents Below.

Filed August 7, 2001
Affirmed
Gordon W. Shumaker, Judge

Ramsey County District Court
File No. C80010078

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Considered and decided by Amundson, Presiding Judge, Lansing, Judge, and Shumaker, Judge.

UNPUBLISHED OPINION

GORDON W. SHUMAKER, Judge

In this appeal from "quick-take" condemnation orders allowing respondent's acquisition of appellant's real estate, appellant alleges that the district court made various procedural errors and denied appellant due process of law. Because the district court followed and applied all requisite legal procedures and accorded appellant due process of law, we affirm.

FACTS

In 1996, the Saint Paul City Council passed a resolution to support the construction of an enclosed pedestrian walkway linking major downtown Saint Paul hotels and the Saint Paul Civic Center, now known as the RiverCentre. Among the supporters of the project was respondent Port Authority of the City of Saint Paul, which holds ownership interests in two downtown hotels.

By 1997, two proposals for the project came before the city council, the "Kellogg Boulevard Scheme" and the "Fourth Street Concourse Scheme." After study and research, the city council approved the Fourth Street design. This approach involved the possibility of the erection of a three-story "connector building" that would provide both skyway and tunnel connections to the pedestrian link. The connector building was to be constructed on a 12-space surface parking lot owned by appellant Baillon Company and leased to Imperial Parking for operation as a public parking lot.

In September 1999, the port authority's board of commissioners authorized the port authority to contribute

$1,000,000 to the project. The city suggested that, instead of contributing money to the project, the port authority should instead acquire the property. The port authority's board authorized the port authority to negotiate with Baillon for the purchase of the property and, if a purchase could not be negotiated, to exercise the power of eminent domain to acquire the real estate.

On May 23, 2000, the city and the port authority agreed that the latter would acquire the Baillon land:

> The PORT shall acquire, on behalf of the CITY, all permanent and temporary real property ownership and easement rights not owned or controlled by the CITY as of April 1, 2000, necessary for construction and operation of the PROJECT. Upon acquisition of such rights the PORT shall promptly transfer the acquired rights to the CITY, except for temporary rights acquired for construction purposes, which shall be retained by the PORT.

By November 2000, the port authority had negotiated with Baillon and had offered to buy the property for $390,000, which was $30,000 higher than the value determined by an independent appraisal the port authority had obtained. Baillon declined the offer.

Soon thereafter, the port authority filed with the district court its petition for the "quick-take" of the Baillon property under Minn. Stat. § 117.042 (2000). Baillon contested the taking and filed with the court a brief and exhibits in opposition. The district court heard arguments and received additional Baillon exhibits at the hearing.

The district court issued its orders for the "quick-take." Baillon moved for reconsideration of the orders but the court denied the motion and, in an amended order, authorized a "quick-take" deposit and the transfer of title to the property to take place on February 28, 2001. Baillon did not move for a

stay of that order. The district court administrator transferred title to the port authority on that date. Baillon appeals from the orders effectuating the "quick-take" acquisition of the property.

DECISION

The judiciary's review of condemnation proceedings has always been "very narrow." *In re Condemnation by Minneapolis Community Dev. Agency,* 582 N.W.2d 596, 598 (Minn. App. 1998), *review denied* (Minn. Oct. 29, 1998) *(MCDA Nicollet).* The court's limited scope of review only allows the port authority's decision to be overturned if it was "arbitrary, unreasonable, or capricious, or if the evidence against the necessity or public use is overwhelming." *City of Duluth v. State,* 390 N.W.2d 757, 764 (Minn. 1986) (citation omitted).

I. *Statutory provisions*

The "quick-take" condemnation procedure is described in Minn. Stat. § 117.042 (2000). This is not a separate kind of condemnation proceeding; rather, it is a step in a condemnation proceeding. *City of Rochester v. Peoples Coop. Power Ass'n, Inc.,* 505 N.W.2d 621, 626 (Minn. App. 1993). Under the "quick-take" procedure,

> at least 90 days prior to the date on which possession is to be taken, [the owner of the property shall be notified] of the intent to possess by notice served by certified mail * * * .

Minn. Stat. § 117.042. However,

> before taking title and possession [the petitioner] shall pay to the owner or deposit with the court an

> amount equal to petitioner's approved appraisal of value.
>
> *Id.*
>
> If it is deemed necessary to deposit the above amount with the court the petitioner may apply to the court for an order transferring title and possession of the property or properties involved from the owner to the petitioner.

Id. The petitioner obtains the right to title and possession of the property after the filing of the award by the court-appointed commissioners and depositing three-fourths of the award with the court. *Id.*

The port authority filed its petition under Minn. Stat. § 117.042 on November 22, 2000, and served the petition and notice of hearing on Baillon on November 29, 2000. Possession was not authorized to take place until at least February 28, 2001. The port authority deposited the requisite amount of money before taking possession. Thus, the record shows that the statutory requirements of Minn. Stat. § 117.042 were appropriately followed. However, because condemnation under the "quick-take" procedure is only a step in the condemnation process, we must consider whether all aspects in the condemnation proceedings were proper.

2. *Sufficiency of the hearing*

Baillon argues that the district court violated its due process rights by not granting its request for an evidentiary hearing or trial so that it could contest the necessity of the taking. Baillon also argues that the district court violated its due process rights by not allowing it to call witnesses at the January 26, 2001, hearing in opposition to the petition for condemnation.

No person shall be deprived of property without due process of law. Minn. Const. art. I, § 7. The basic

requirements of due process are notice and an opportunity for a hearing. *Alton v. Wabedo Township,* 524 N.W.2d 278, 281 (Minn. App. 1994). There is no applicable body of law in this case that would alter this standard. *See* Minn. Stat. § 117.075 (2000) (the district court shall "hear all competent evidence offered for or against the granting of the petition); *see also Peoples Coop. Power Ass'n, Inc.,* 505 N.W.2d at 626 (stating that relevant bodies of law "do not suggest that the hearing afforded the parties in quick-take proceedings is any more limited than the hearing afforded in general condemnation proceedings"). Baillon received timely notice of the hearing on the "quick-take" petition, and a hearing was held in district court on January 26, 2001. Baillon did submit documentary evidence in opposition to the taking and was allowed to present argument on the issues. The record does not show that Baillon requested an opportunity to call witnesses at that time.

The district court was not required to grant any additional hearing. *See In re Condemnation by Minneapolis Community Dev. Agency,* 439 N.W.2d 708, 710-711 (Minn. 1989) *(MCDA LaSalle)* (finding that the hearing was adequate because considerable documentary evidence was presented to the court and the issues were thoroughly argued and briefed, and the property owner failed to show how any information it might produce at a further evidentiary hearing would successfully oppose the condemnation). Baillon did not show, either at the hearing in district court or in any submissions with this court, how allowing witnesses to testify at the hearing would have provided any compelling evidence against the propriety of the taking. Because we find that the district court hearing was sufficient for Baillon to present evidence contesting the necessity of the taking and that the district court was not required to grant Baillon's motion for an additional evidentiary hearing or trial, Baillon's due process rights were not violated.

3. *Necessity*

The port authority has the power of eminent domain, "needed by it for public use." Minn. Stat. § 469.055, subd. 8 (2000). It must "adopt a resolution describing the property and stating its intended use and the necessity of the taking." *Id.* Baillon argues that there are no facts supporting the public necessity for the taking. Necessity is a question of fact, and the district court's decision on this matter will not be reversed on appeal unless clearly erroneous. *MCDA Nicollet,* 582 N.W.2d at 599. The district court's finding is clearly erroneous "if, on the entire evidence, we are left with a definite and firm conviction that a mistake has been committed." *Housing & Redev. Auth. v. Schapiro,* 297 Minn. 103, 109, 210 N.W.2d 211, 214 (1973).

The port authority is not required to show an "absolute or indispensable necessity, but only that the proposed taking is reasonably necessary or convenient for the furtherance of a proper purpose." *City of Pipestone v. Halbersma,* 294 N.W.2d 271, 274 (Minn. 1980) (citation omitted). "Once necessity has been established, condemnation may only be denied when the party contesting condemnation demonstrates that the condemnation proposal is manifestly arbitrary or unreasonable." *Itasca County v. Carpenter,* 602 N.W.2d 887, 889 (Minn. App. 1999) (citation omitted). Arbitrary or unreasonable in this context means acting "capriciously, irrationally, and without basis in law or under conditions which do not authorize or permit the exercise of the asserted power." *Id.* at 889-90 (quotation omitted).

On January 25, 2000, the port authority passed a resolution finding that

> the acquisition of [the Baillon property] is necessary for the support of a skyway bridge from the Landmark Towers Building over Fourth Street and

connection of the skyway system to the RiverCentre
* * *.

The city considered as many as twelve different possibilities for the pedestrian link. It narrowed the choices to two and, after conducting a "design charrette" on December 5, 1997, it chose the Fourth Street design. The evidence supports the decision to construct the Fourth Street pedestrian connection, and the condemnation of the Baillon property was necessary to further the project.

Baillon suggests that the fact that the city selected the Fourth Street option from among several possibilities shows that it is not necessary to acquire the Baillon property. This demonstrates, argues Baillon, that the city's choice was arbitrary. But the mere existence of possible alternatives to a plan for taking does not in itself support a finding of arbitrariness. *Halbersma,* 294 N.W.2d at 274.

Baillon also argues that the taking is not necessary because the project at this point is too speculative to allow a condemnation. Speculative purposes will not support the assertion of necessity. *Carpenter,* 602 N.W.2d at 890.

In support of this argument, Baillon cites to *Regents of Univ. of Minn. v. Chicago & N. W. Transp. Co.,* 552 N.W.2d 578 (Minn. App. 1996), *review denied* (Minn. Nov. 20, 1996). In that case, the regents were interested in a parcel of property located near the university that was owned (and contaminated) by a railroad. *Id.* at 579. The regents had not yet determined or approved a use for the property, but had in mind the possibilities of student housing, a steam plant, or women's athletic facilities. *Id.* Then the regents learned that the railroad had sold the property to another entity. *Id.* at 579-80. Soon thereafter, the university filed a petition to acquire the property by eminent domain. *Id.* at 580. The court noted that, although the university had proposed three uses for the land, the uses were mutually exclusive and the regents had not yet decided how to use the property. *Id.*

Furthermore, since the land was contaminated, none of the proposed uses could be made a reality until the land was cleaned up. *Id.* The court found that, based upon this combination of factors, the taking was not necessary at that time because the university's use of the land was too speculative. *Id.*

Here, although specific "bids" have not gone out, the port authority and the city have determined the route, design, and appearance of the pedestrian walkway, and have determined a price cap on the project. They have also passed resolutions stating the public purpose and necessity of the project and directed the port authority to acquire the Baillon property in furtherance of the project. Although there is the possibility that the project may cost more than $10 million, at which point the project might be abandoned, this contingency alone does not render the project speculative. *See MCDA Nicollet,* 582 N.W.2d at 601 (finding that the relative certainty of the project stands in marked contrast to the ambiguity and uncertainty of the plans for the property to be condemned by the county in *Schumm v. Milwaukee County,* 258 Wis. 256, 45 N.W.2d 673 (1951), where the necessary resolutions were not in place, it was uncertain whether resolutions would ever be in place, there was no valid contract between the condemning authority and the intended beneficiary of the property, and numerous details were still to be resolved). The lack of bids and the possibility that costs might exceed the project price cap are not sufficient to render the project too speculative for a proper taking.

Lastly, Baillon argues that, although the port authority has independent powers of eminent domain, it is condemning Baillon's property "on behalf of" the city, and thus it is acting in an agency relationship with the city. Because it is acting as an agent for the city, it must condemn the property in accordance with the procedure set out in the city charter, which requires a public hearing before the city council. No such hearing was ever held. Whether an agency relationship

exists is a question of fact, and the party alleging the existence of the agency has the burden of proof. *White v. Boucher,* 322 N.W.2d 560, 566 (Minn. 1982). "Generally, an agency relationship is based upon consent by one person that another shall act on his behalf and be subject to his control." *Frank v. Winter,* 528 N.W.2d 910, 914 (Minn. App. 1995) (citations omitted), *review denied* (Minn. Apr. 27, 1995).

Baillon points to the agreement between the city and the port authority stating that the port authority is to acquire the property "on behalf of" the city. But that same agreement also expresses the intention of the parties that "[n]o partnership, joint venture, or principal-agent is established among the parties under this Agreement." In addition to the parties' expressed intent that there be no agency relationship, the evidence shows that the port authority had an independent interest in the acquisition of the property and that it controlled both the fact and the method of the acquisition. The property is located in the port authority's economic development district and the port authority, as owner of major downtown hotels, would benefit from a pedestrian link in downtown Saint Paul. If the port authority was unsuccessful in attempting to purchase the property, it was to acquire the property in its own name through its own power of eminent domain and with its own funds. The substantial evidence on this issue in the record compels the conclusion that the port authority was not serving as the city's agent in this taking.

4. *Mootness*

The port authority contended at oral argument that this case is now moot because Baillon did not seek a stay of the proceedings pending appeal, and the project has gone forward since the district court authorized the taking of Baillon's property. *See* Minn. R. Civ. App. P. 108.01, 108.03 (stating that when a stay of an order is obtained, it stays all further proceedings in the district court upon the order appealed from

or the matter embraced in it). By order of a special term panel of this court, we previously found that, although the property has been taken and construction has begun, appellate review is not precluded. *See County of Blue Earth v. Stauffenberg*, 264 N.W.2d 647, 649-650 (Minn. 1978) (stating appellate court could order property which had been condemned and improved by condemning authority returned to original order); *In re Rapp*, 621 N.W.2d 781, 784 (Minn. App. 2001) (stating that although land has been condemned and a highway constructed across it, the property owner from whom the property was condemned still has relief in the form of the return of his or her property). Thus, despite Baillon's failure to obtain a stay, the matter is not dismissable as moot. *See Housing & Redev. Auth. v. Walser Auto Sales, Inc.*, __N.W.2d__ (Minn. App. July 3, 2001) (a condemnee's appeal of the public necessity for the taking is not rendered moot simply because the condemnor has acquired title under the quick-take statute).

We are persuaded by the record that Baillon received proper and timely notice of the quick-take petition; that the district court held the requisite hearing and did not in any way prevent Baillon from presenting evidence at that hearing; that Baillon was not entitled to a second hearing; that the taking properly serves a public purpose; and that the port authority was not acting as the city's agent in the taking.

Affirmed.

STATE OF MNNESOTA DISTRICT COURT

COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT
Type of Case: Condemnation

Court File No. C8-00-10078
Judge John S. Connolly

Port Authority of the City of Saint Paul,

Petitioner,

vs.

AMENDED ORDER GRANTING PETITION AND APPOINTING COMMISSIONERS

Baillon Company, Imperial Parking, Inc., City of Saint Paul, Ramsey County, and all other persons unknown claiming any right, title, estate, interest, or lien in the real estate described herein,

Respondents.

IN THE MATTER OF THE CONDEMNATION OF CERTAIN REAL PROPERTY LOCATED IN THE CITY OF SAINT PAUL, COUNTY OF RAMSEY, STATE OF MINNESOTA FOR THE RIVERCENTRE PEDESTRIAN LINK

The above-entitled matter came on for hearing before the Honorable John S. Connolly, Judge of District, on January 26, 2001, at 11:00 a.m. upon the Petition of Port Authority of the City of Saint Paul (the "Port Authority"), for the taking of certain real property under its power of eminent domain.

Marc J. Manderschied appeared on behalf of Petitioner Port Authority of the City of Saint Paul. The following appearances were made on behalf of the Respondents James L. Forman, Esq.

Upon the evidence and matters appearing in the files and records of the Court herein, the Court hereby finds, concludes, and orders as follows:

FINDINGS OF FACT

1. Petitioner Port Authority is a public body corporate and politic, duly organized and existing pursuant to Minn. Stat. § 469.049.

2. The Port Authority has the power to engage in development and redevelopment activities under the Port Authority Act, Minnesota Statutes §§ 469.049 to 469.068, including the power of eminent domain, as provided in Minn. Stat. Ch. 117 and Minn. Stat. § 469.055, Subd. 8.

3. For several years, the Port Authority, the City of Saint Paul, Ramsey County, Capital City Properties, and the Saint Paul Convention and Visitors Bureau Foundation have been studying and considering ways of connecting the existing downtown skyway system directly to the RiverCentre Complex and other buildings by means of an enclosed pedestrian connections between the RiverCentre Complex and the existing skyway system in the Landmark Towers building.

4. After the consideration of various reports and analyses, the public entities referenced above determined that the best and most feasible alternative for providing and enclosed public pedestrian connection between the downtown core and the RiverCentre Complex was to begin such

connection in the Landmark Towers building, cross Fourth Street with a skyway, construct a building to bring pedestrians from the second level to below street level, and to continue from this structure under Fourth Street by means of a tunnel to connect directly to the RiverCentre Complex.

5. In order to properly construct such a connection, the Port Authority and City of Saint Paul determined that it was necessary to acquire all property not already owned or controlled by the City of Saint Paul, which was necessary for the construction and operation of the RiverCentre pedestrian connection.

6. The Port Authority, the City of Saint Paul, Ramsey County, Capital City Properties, and the Saint Paul Convention and Visitors Bureau Foundation entered into that certain RiverCentre Pedestrian Link Cooperative Agreement, effective as of May 23, 2000, wherein it was determined that the Port Authority Should acquire, on behalf of the City of Saint Paul, all permanent and temporary real property ownership and easement rights not owned or controlled by the City as of April 1, 2000, which were necessary for the construction and operation of the RiverCentre pedestrian connection.

7. The Port Authority had previously determined that if the RiverCentre pedestrian connection were to be constructed as had been proposed, it would then be necessary to acquire a small surface parking lot adjacent to the Qwest Building on Fourth Street, which property would be necessary for the support of the skyway bridge from the Landmark Towers building over Fourth Street and to provide a site for the construction of a stair tower, elevator, and the beginning of the tunnel which would continue to and connect with the RiverCentre Complex. Resolution No. 3818 was adopted by the Port Authority Board of Commissioners on January 25, 2000, authorizing the acquisition of the real property legally described therein.

8. The property which the Port Authority seeks to acquire is described as follows:

> The Westerly 60 feet of Lot Two (2), Block Nineteen (19), Rice and Irvine's Addition to the City of Saint Paul, except that part conveyed in Book 944 of Deeds, page 511, according to the plat thereof on file and of record in the office of the County Recorder, including any and all vacated rights-of-way, easements, appurtenances, gaps, and overlaps, Saint Paul, Ramsey Count, Minnesota.

(hereinafter the – "Property").

9. The Port Authority determined that it was necessary for the Port Authority to undertake the acquisition of the Property for the betterment of the Port Authority's downtown economic development district and to facilitate the skyway connection of numerous buildings owned and/or financed by the Port Authority within the Port Authority's downtown economic development district.

10. Further, in Resolution No. 3818, the Board of Commissioners of the Port Authority directed its staff and legal counsel to enter into negotiations with the owner of the Property and that, in the event negotiations for the acquisition of said Property were not fruitful, the Board of Commissioners authorized and directed its legal counsel to acquire the Property in the name of the Port Authority pursuant to the Port Authority's powers of eminent domain.

11. The Port Authority made an offer to acquire the Property for a sum in excess of the amount of its approved appraisal of value, which figure is $360,000. Such offer was rejected.

12. The schedule for construction of the RiverCentre pedestrian link is such that the project is to be fully completed and operational by November 2001; the Port Authority staff has reviewed the construction schedule for completion of the

RiverCentre pedestrian connection and has determined that the project must be bid and construction commenced by the end of February 2001, whereby it is necessary to use the quick take procedures set forth in Minn. Stat. § 117.042 and to acquire the herein described real property by no later than February 28, 2001.

13. The Port Authority seeks to acquire the fee simple absolute title to the Property because such property is needed by the Port Authority for public use for purposes of the RiverCentre pedestrian connection; further, the acquisition of the Property and the construction of the RiverCentre pedestrian connection is for a public purpose and is needed to redevelop an unimproved parking lot which is marginal property, for the betterment of the Port Authority's downtown economic development district, and to facilitate the skyway connection of numerous buildings owned and or financed by the Port Authority in its downtown economic development district.

CONCLUSIONS OF LAW

1. The procedures used by the Port Authority are in accord with the statutes governing the acquisition of real property through condemnation.

2. The Petition in Condemnation and Motion for Transfer o f Title and Possession Under Minn. Stat. § 117.042 is in due form as required by the applicable Minnesota statutes.

3. Notice of the filing of the Petition was duly served upon all Respondents named in the Petition within the time required by law, and proof of service has been filed with the District Court Administrator.

4. The proposed acquisition by the Port Authority serves a public purpose in that it will provide part of the site for an enclosed public pedestrian connection between the downtown core and the RiverCentre Complex; result in the

betterment of the Port Authority's downtown economic development district; facilitate the skyway connection of numerous buildings owned and/or financed by the Port Authority within the Port Authority's downtown economic development district; and provide for the redevelopment of marginal property.

5. None of the legislative or administrative findings that were made by the Port Authority were in any way arbitrary, capricious, unreasonable, or constituted an abuse of discretion.

6. The proposed taking by the Port Authority is reasonably necessary and, as such, is constitutional and authorized by law.

IT IS HEREBY ORDERED THAT:

1. The Petition for Condemnation filed by the Port Authority in this matter to acquire fee simple absolute title to the Property is hereby GRANTED.

2. The following persons, being disinterested residents of Ramsey County, Minnesota, are hereby appointed as Commissioners to ascertain the amount of damages suffered by the Respondents on account of such taking:

A. Richard M. Parranto
B. Thomas J. Delaney
C. Peter E. Fooshe, Jr.
D. Steven M. DeCaster (Alternate)
E. Carol L. Johnson (Alternate)

The last named Commissioners will serve as alternates, should any of the first three be disqualified or otherwise unable to serve.

3. The meeting of the Commissioners shall be held in the office of the District Court Administrator, Room 600, Ramsey County Courthouse, Saint Paul, Minnesota, on the

22nd day of February, 2001, at 10:00 a.m., or as soon thereafter as possible, not to exceed three (3) weeks from the date of this Order. Compensation to be paid each Commissioner shall be $400 per actual day of service (or $200 per half day) plus mileage and parking. The Commissioners shall report to and file with the Court their award of damages within one hundred eighty (180) days of this Order. The Commissioners are hereby authorized to require the parties to exchange appraisals seven (7) days prior to the commissioners' hearing.

It is further ordered that, pursuant to Minnesota Statutes § 117.041, the Petitioner, its employees and agents, are authorized upon reasonable notice to the owner or occupants thereof to enter the Property which is the subject of this Petition for the purposes of completing an appraisal of the value thereof, for conducting surveys, soil borings, tests, inspections, and evaluations of conditions present on this Property on or after the date hereof.

4. The attached memorandum from the court's order on February 1, 2001 is incorporated herein.

Dated: February 21, 2001

BY THE COURT:

/s/
Judge of District Court

MEMORANDUM

Defendant Baillon Company makes three arguments on their claim that there should not be a condemnation and transfer of title and possession under Minn. Stat. § 117.042 (Quick Take). First, Baillon argues that there has been no public hearing as mandated by the St. Paul City Ordinances. Secondly, that the condemnation is premature, and lastly, that the petitioner has not established that it is necessary.

PUBLIC HEARING?

Defendant Baillon claims that they are entitled to a public hearing before any condemnation can be made by the Port Authority, due to the fact that the Port Authority is acting on behalf of the City of St Paul. On February 2, 2000, the defendant Baillon Company was given notice that there would be a public hearing. (See Forman Affidavit, Exhibit D.) The notice in Exhibit D states a public hearing is being scheduled before the St Paul City Council to hear the matter proceedings with this acquisition of property rights needed for the improvement. On February 16, 2000, the defendant Baillon received a notice from the Department of Technology and Management Services, a real estate division for the City of St. Paul, which stated that it had been brought to the attention of the City of St. Paul that the St. Paul Port Authority intends to proceed with the acquisition of property rights necessary to construct the above-mentioned pedestrian tunnel. (See Exhibit E.) For those reasons, the public hearing for the City of St. Paul was cancelled.

The Minnesota Legislature has created port authorities throughout the state for the purposes of economic development. The state legislature has vested the Port Authority with condemnation powers. See Minn. Stat. § 609.055 subd. 8. Said statute sets forth the power vested in the Port Authority where they can acquire property under the eminent domain. The powers are broad, among other things the Port Authority has power to condemn for eminent domain even if the property was acquired by its owner under eminent domain or even if the property is already devoted to a public use. The state legislature has not made a public hearing a condition precedent before condemnation proceedings can be undertaken.

Defendant Baillon argues that the City of St. Paul Charter requires it and due to the fact that the Port Authority is acting on behalf of the City of St. Paul that the Port Authority is

bound by the St. Paul City Chapter. The legislature has given the Port Authority the right to exercise eminent domain in order to acquire property which is necessary for carrying out an economic development project. See Minn. Stat § 469.058. Subdivision 2 of such statute states:

> POLICY-It is state policy and in the public interest to have a Port Authority exercise the power of eminent domain and advance and spend public money for the purposes in sections 469.048 to 469.068 and to provide the means to develop marginal property according to the findings in subdivision 3.

The St. Paul Port Authority in its Resolution No. 3818 noted that the property which it proposed to acquire is located within the Port Authority's Downtown Economic Development District. The resolution further noted that the Port Authority's staff recommended that the Port Authority undertake the acquisition of this underutilized property for the betterment of the downtown economic district and to facilitate the skyway connection of numerous buildings owned and or financed by the Port Authority within the economic development district. At this time the Port Authority, or entities it controls, are the owners of the Radisson Riverfront Hotel and the Radisson City Center Hotel, both of which will benefit by the enclosed pedestrian connection from the hotel properties to the RiverCentre Complex. This court finds that the Port Authority is not required under the Minnesota statutes to hold a public hearing. The resolution of the Port Authority to proceed in the condemnation is sufficient.

NECESSITY?

In the case of City of Duluth v. State, 390 N.W.2d 757(Minn. 1986), the Minnesota Supreme Court stated at

page 764, "a condemning authority need not establish that the necessity for the taking is absolute or indispensable." Although lands may not be taken by eminent domain unless such taking appears to be necessary, it is well settled in this jurisdiction that there be no showing of absolute or indispensable necessity, but only that the proposed taking is reasonably necessary or convenient for the furtherance of that view. The defendant Baillon, in this case, would have the burden of establishing by overwhelming evidence that the proposed taking of its property is not necessary. See City of Duluth, *supra* at 764. Baillon would have to establish that the Port Authority's actions are unlawful, manifestly arbitrary, or unreasonable or that the evidence against necessity is practically conclusive against the Port Authority. Metropolitan Sewer Bd. v. Thiss, 200 N.W.2d 396, 397 (Minn. 1972).

PREMATURE?

Defendant Baillon argues that the Port Authority recently completed the project book for the project. They argue that documents from the Port Authority indicate that in the events the bids exceed the cost of the project, which is $10 million, any of the public entities may choose to stop the project. Counsel for the Port Authority stated at oral arguments that there is a chance that the project would not go through if the cost exceeded the estimate, however, in that event, as counsel for the Port Authority argued, the defendant Baillon would be entitled to a return of the property, This court finds that the taking of the property at this time is not premature and if for some reason the project does not go through the defendant Baillon has adequate remedies.

JSC

STATE OF MNNESOTA DISTRICT COURT

COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT
Type of Case: Condemnation

Court File No. C8-00-10078
Judge John S. Connolly

Port Authority of the City of Saint Paul,

Petitioner,

vs.

AMENDED ORDER AUTHORIZING PAYMENT OR DEPOSIT AND TRANSFERRING OF TITLE

Baillon Company, Imperial Parking, Inc., City of Saint Paul, Ramsey County, and all other persons unknown claiming any right, title, estate, interest, or lien in the real estate described herein,

Respondents.

IN THE MATTER OF THE CONDEMNATION OF CERTAIN REAL PROPERTY LOCATED IN THE CITY OF SAINT PAUL, COUNTY OF RAMSEY, STATE OF MINNESOTA FOR THE RIVERCENTRE, PEDESTRIAN LINK

The above-entitled matter came on for hearing before the undersigned Judge John S. Connolly, on January 26, 2001, upon the Motion of Petitioner, Port Authority of the City of Saint Paul. The Court having heard the arguments of counsel present, and upon all of the files, records and proceedings herein, makes the following Order:

FINDINGS OF FACT

1. Petitioner Port Authority is a public body corporate and politic, duly organized and existing pursuant to Minn. Stat. § 469.049.

2. The Port Authority has the power to engage to development and redevelopment activities under the Port Authority Act, Minnesota Statutes §§ 469.048 to 469.068, including the power of eminent domain, as provided in Minn. Stat. Ch. 117 and Minn. Stat. § 469.05.5, Subd. 8.

3. For several years, the Port Authority, the City of Saint Paul, Ramsey County, Capital City Properties, and the Saint Paul Convention and Visitors Bureau Foundation have been studying and considering ways of connecting the existing downtown skyway system directly to the RiverCentre Complex and other buildings by means of an enclosed pedestrian connection between the RiverCentre Complex and the existing skyway system in the Landmark Towers building.

4. After the consideration of various reports and analyses, the public entitles referenced above determined that the best and most feasible alternative for providing an enclosed public pedestrian connection between the downtown core and the RiverCentre Complex was to begin such connection in the Landmark Towers building, cross Fourth Street with a skyway, construct a building to bring pedestrians from the second level to below street level, and to continue from this structure under Fourth Street by means of a tunnel to connect directly to the RiverCentre Complex.

5. In order to properly construct such a connection, the Port Authority and City of Saint Paul determined that it was necessary to acquire all property not already owned or controlled by the City of Saint Paul, which was necessary for the construction and operation of the RiverCentre pedestrian connection.

6. The Port Authority, the City of Saint Paul, Ramsey County, Capital City Properties, and the Saint Paul Convention and Visitors Bureau Foundation entered into that certain RiverCentre Pedestrian Link Cooperative Agreement, effective as of May 23, 2000, wherein it was determined that the Port Authority should acquire, on behalf of the City of Saint Paul, all permanent and temporary real property ownership and easement rights not owned or controlled by the City as of April 1, 2000, which were necessary for the construction and operation of the RiverCentre pedestrian connection.

7. The Port Authority had previously determined that if the RiverCentre pedestrian connection were to be constructed as had been proposed, it would then be necessary to acquire a small surface parking lot adjacent to the Qwest Building on Fourth Street, which property would be necessary for the support of the skyway bridge from the Landmark Towers building over Fourth Street and to provide a site for the construction of a stair tower, elevator, and the beginning of the tunnel which would continue to and connect with the RiverCentre Complex. Resolution No. 3818 was adopted by the Port Authority Board of Commissioners on January 25, 2000, authorizing the acquisition of the real property legally described therein.

8. The Port Authority determined that it was necessary for the Port Authority to undertake such acquisition for the betterment of the Port Authority's downtown economic development district and to facilitate the skyway connection of numerous buildings owned and/or financed by the Port

Authority within the Port Authority's downtown economic development district.

9. Further, in Resolution No. 3818, the Board of Commissioners of the Port Authority directed its staff and legal counsel to enter into negotiations with the owner of the Property and that, in the event negotiations for the acquisition of said property were not fruitful, the Board of Commissioners authorized and directed its legal counsel to acquire the Property in the name of the Port Authority pursuant to the Port Authority's powers of eminent domain.

10. The Port Authority made an offer to acquire the Property for a sum in excess of the amount of its approved appraisal of value, which figure is $360,000. Such offer was rejected.

11. The schedule for construction of the RiverCentre pedestrian link is such that the project is to be fully completed and operational by November 2001; the Port Authority staff has reviewed the construction schedule for completion of the RiverCentre pedestrian connection and has determined that the project must be bid and construction commenced by the end of February 2001, whereby it is necessary to use the quick take procedures set forth in Minn. Stat. § 117.042 and to acquire the herein described real property by no later than February 28, 2001.

12. The Port Authority seeks to acquire the fee simple absolute title to the Property because such property is needed by the Port Authority for public use for purposes of the RiverCentre pedestrian connection, further, the acquisition of the Property and the construction of the RiverCentre pedestrian connection is for a public purpose and is needed to redevelop an unimproved parking lot which is marginal property, for the betterment of the Port Authority's downtown economic development district, and to facilitate the skyway connection of numerous buildings owned and/or financed by the Port Authority in its downtown economic development district.

CONCLUSIONS OF LAW

1. The Notice of Intent to Take Possession Under Minn. Stat. § 117.042 and Notice of Hearing to Approve Petition in Condemnation and Motion for Transfer of Title and Possession under Minn. Stat. § 117.042 were duly served upon all Respondents named in the Petition within the time required by law, and proof of service has been filed with the District Court Administrator.

2. The Port Authority requires title to and possession of the real property prior to the time within which the Court-appointed commissioners could reasonably be expected to file their award and, as such, the Port Authority's use of the quick take provisions set forth in Section 117.042 of the Minnesota Statutes is reasonable and in accordance with law.

IT IS HEREBY ORDERED THAT:

1. On or after February 28, 2001, which date is the 91st day after service was made upon all respondents, the Petitioner is hereby permitted and authorized to deposit into the Court, or to pay directly to the owners pursuant to Minn. Stat. § 117.042 the sum of $360,000, which is the amount of its approved appraisal of value as to the property legally described as follows:

> The Westerly 60 feet of Lot Two (2), Block Nineteen (19), Rice and Irvine's Addition to the City of Saint Paul, except that part conveyed in Book 944 of Deeds, page 511, according to the plat thereof on file and of record in the office of the County Recorder, including any and all vacated rights-of-way, easements, appurtenances, gaps, and overlaps, Saint Paul, Ramsey County, Minnesota

2. The District Court Administrator is directed to accept the aforementioned deposit.

3. Immediately following the deposit, the District Court Administrator shall, from the deposited funds, pay to the County of Ramsey such amounts as are levied and pending against the real estate described herein as special assessments or other annual charges that may be or become a lien thereon as of the date of transfer of title and possession pursuant to this Order. The District Court Administrator shall also pay, from these deposited funds, all real estate taxes payable with respect to this real estate in the year 2000, the year in which the Petition in this matter was filed, and preceding years, if any. All payments shall include interest and penalties due, if any, at the time of payment.

4. Upon making the deposit into the District Court or payment by Petitioner directly to the owner, the title and right to possession of the real estate described herein shall, without further notice, immediately vest in the Petitioner.

5. Petitioner shall give written notice of the fact of deposit or payment to all parties previously appearing in these proceedings.

6. Failure to vacate the property described herein within five (5) days after notice of payment or deposit in accordance with this Order may cause the Respondents or others claiming under them to be found in contempt of court. The Court retains jurisdiction of this matter for the purpose of granting the Petitioner other and further relief as may be necessary and appropriate to implement the provisions of this Order and to otherwise transfer title and right to possession of the property described herein to Petitioner in accordance with the provisions of Minn. Stat. §§ 117.042 and 117.043.

7. The attached memorandum is incorporated herein.

Dated: February 21, 2001 BY THE COURT:

/s/

John S. Connolly
Judge of District Court

MEMORANDUM

Defendant Baillon Company makes three arguments on their claim that there should not be a condemnation and transfer of title and possession under Minn. Stat. §117.042 (Quick Take). First, Baillon argues that there has been no public hearing as mandated by the St. Paul City Ordinances. Secondly, that the condemnation is premature, and lastly, that the petitioner has not established that it is necessary.

PUBLIC HEARING?

Defendant Baillon claims that they are entitled to a public hearing before any condemnation can be made by the Port Authority, due to the fact that the Port Authority is acting on behalf of the City of St. Paul. On February 2, 2000, the defendant Baillon Company was given notice that there would be a public hearing. (See Forman Affidavit, Exhibit D.) The notice in Exhibit D states a public hearing is being scheduled before the St. Paul City Council to hear the matter proceedings with this acquisition of property rights needed for the improvement. On February 16, 2000, the defendant Baillon received a notice from the Department of Technology and Management Services, a real estate division for the City of St. Paul, which stated that it had been brought to the attention of the City of St. Paul that the St. Paul Port Authority intends to proceed with the acquisition of property rights necessary to construct the above-mentioned pedestrian

tunnel. (See Exhibit E.) For those reasons, the public hearing for the City of St. Paul was cancelled.

The Minnesota Legislature has created port authorities throughout the state for the purposes of economic development. The state legislature has vested the Port Authority with condemnation powers. See Minn. Stat. § 609.055 subd. 8. Said statute sets forth the power vested in the Port Authority where they can acquire property under the eminent domain. The powers are broad, among other things the Port Authority has power to condemn for eminent domain even if the property was acquired by its owner under eminent domain or even if the property is already devoted to a public use. The state legislature has not made a public hearing a condition precedent before condemnation proceedings can be undertaken.

Defendant Baillon argues that the City of St. Paul Charter requires it and due to the fact that the Port Authority is acting on behalf of the City of St. Paul that the Port Authority is bound by the St. Paul City Chapter. The legislature has given the Port Authority the right to exercise eminent domain in order to acquire property which is necessary for carrying out an economic development project. See Minn. Stat. § 469.058. Subdivision 2 of such statute states:

> POLICY-It is state policy and in the public interest to have a Port Authority exercise the power of eminent domain and advance and spend public money for the purposes in sections 469.048 to 469.068 and to provide the means to develop marginal property according to the findings in subdivision 3.

The St. Paul Port Authority in its Resolution No. 3818 noted that the property which it proposed to acquire is located within the Port Authority's Downtown Economic Development District. The resolution further noted that the

Port Authority's staff recommended that the Port Authority undertake the acquisition of this underutilized property for the betterment of the downtown economic district and to facilitate the skyway connection of numerous buildings owned and or financed by the Port Authority within the economic development district. At this time the Port Authority, or entities it controls, are the owners of the Radisson Riverfront Hotel and the Radisson City Center Hotel, both of which will benefit by the enclosed pedestrian connection from the hotel properties to the RiverCentre Complex. This court finds that the Port Authority is not required under the Minnesota statutes to hold a public hearing. The resolution of the Port Authority to proceed in the condemnation is sufficient.

NECESSITY?

In the case of City of Duluth v. State, 390 N.W.2d 757(Minn. 1986), the Minnesota Supreme Court stated at page 764, "a condemning authority need not establish that the necessity for the taking is absolute or indispensable." Although lands may not be taken by eminent domain unless such taking appears to be necessary, it is well settled in this jurisdiction that there be no showing of absolute or indispensable necessity, but only that the proposed taking is reasonably necessary or convenient for the furtherance of that view. The defendant Baillon, to this case, would have the burden of establishing by overwhelming evidence that the proposed taking of its property is not necessary. See City of Duluth, *supra* at 764. Baillon would have to establish that the Port Authority's actions are unlawful, manifestly arbitrary, or unreasonable or that the evidence against necessity is practically conclusive against the Port Authority. Metropolitan Sewer Bd. v. Thiss, 200 N.W.2d 396, 397(Minn. 1972).

PREMATURE?

Defendant Baillon argues that the Port Authority recently completed the project book for the project. They argue that documents from the Port Authority indicate that in the events the bids exceed the cost of the project, which is $10 million, any of the public entities may choose to stop the project. Counsel for the Port Authority stated at oral arguments that there is a chance that the project would not go through if the cost exceeded the estimate, however, in that event, as counsel for the Port Authority argued, the defendant Baillon would be entitled to a return of the property. This court finds that the taking of the property at this time is not premature and if for some reason the project does not go through the defendant Baillon has adequate remedies.

JSC

STATE OF MNNESOTA DISTRICT COURT

COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT
Type of Case: Condemnation

Court File No. C8-00-10078
Judge John S. Connolly

Port Authority of the City of Saint Paul,

Petitioner,

vs.

PETITION IN CONDEMNATION AND MOTION FOR TRANSFER OF TITLE AND POSSESSION UNDER MINN. STAT. § 117.042

Baillon Company, Imperial Parking, Inc., City of Saint Paul, Ramsey County, and all other persons unknown claiming any right, title, estate, interest, or lien in the real estate described herein,

Respondents.

IN THE MATTER OF THE CONDEMNATION OF CERTAIN REAL PROPERTY LOCATED IN THE CITY OF SAINT PAUL, COUNTY OF RAMSEY, STATE OF MINNESOTA FOR THE RIVERCENTRE PEDESTRIAN LINK

TO THE DISTRICT COURT AND ALL RESPONDENTS ABOVE-NAMED:

Petitioner, Port Authority of the City of Saint Paul (hereinafter the "Port Authority") brings this Petition in Condemnation And Motion for Transfer of Title and Possession Under Minn. Stat. § 117.042 and respectfully represents and alleges as follows:

1. Petitioner Port Authority is a public body corporate and politic, duly organized and existing pursuant to Minn. Stat. § 469.049.

2. Pursuant to Minnesota law, the Port Authority has all powers necessary and convenient to carry out the purposes of the Port Authority Act, Minn. Stat. §§ 469.048-469.068, including the power of eminent domain, as provided in Minn. Stat. Chapter 117 and Minn. Stat. Section 469.055, subd. 8.

3. For several years, the Port Authority, the City of Saint Paul, Ramsey County, Capital City Properties, and the Saint Paul Convention and Visitors Bureau Foundation have been studying and considering ways of connecting the existing downtown skyway system directly to the RiverCentre Complex and other buildings by means of an enclosed pedestrian connection between the RiverCentre Complex and the existing skyway system in the Landmark Towers building.

4. After the consideration of various reports and analyses, the public entities referenced above determined that the best and most feasible alternative for providing an enclosed public pedestrian connection between the downtown core and the RiverCentre Complex was to begin such connection in the Landmark Towers building, cross Fourth Street with a skyway, construct a building to bring pedestrians from the second level to below street level, and to continue from this structure under Fourth Street by means of a tunnel to connect directly to the RiverCentre Complex.

5. In order to properly construct such a connection, the Port Authority and City of Saint Paul determined that it was

necessary to acquire all property not already owned or controlled by the City of Saint Paul, which was necessary for the construction and operation of the RiverCentre pedestrian connection.

6. The Port Authority, the City of Saint Paul, Ramsey County, Capital City Properties, and the Saint Paul Convention and Visitors Bureau Foundation entered into that certain RiverCentre Pedestrian Link Cooperative Agreement, effective as of May 23, 2000, wherein it was determined that the Port Authority should acquire, on behalf of the City of Saint Paul, all permanent and temporary real property ownership and easement rights not owned or controlled by the City as of April 1, 2000, which were necessary for the construction and operation of the RiverCentre pedestrian connection.

7. The Port Authority had previously determined that if the RiverCentre pedestrian connection were to be constructed as had been proposed, it would then be necessary to acquire a small surface parking lot adjacent to the Qwest Building on Fourth Street, which property would be necessary for the support of the skyway bridge from the Landmark Towers building over Fourth Street and to provide a site for the construction of a stair tower, elevator, and the beginning of the tunnel which would continue to and connect with the RiverCentre Complex. Attached to this Petition as Exhibit "A" is a true and correct copy of Resolution No. 3818, adopted by the Port Authority Board of Commissioners on January 25, 2000, authorizing the acquisition of the real property legally described therein.

8. The Port Authority determined that it was necessary for the Port Authority to undertake such acquisition for the betterment of the Port Authority's downtown economic development district and to facilitate the skyway connection of numerous buildings owned and/or financed by the Port Authority within the Port Authority's downtown economic development district.

9. Further, in Resolution No. 3818, the Board of Commissioners of the Port Authority directed its staff and legal counsel to enter into negotiations with the owner of the Properly and that, in the event negotiations for the acquisition of said property were not fruitful, the Board of Commissioners authorized and directed its legal counsel to acquire the Property in the name of the Port Authority pursuant to the Port Authority's powers of eminent domain.

10. The Port Authority made an offer to acquire the Property for a sum in excess of the amount of its approved appraisal of value, which figure is $360,000. Such offer was rejected.

11. The schedule for construction of the RiverCentre pedestrian link is such that the project is to be fully completed and operational by November 2001; the Port Authority staff has reviewed the construction schedule for completion of the RiverCentre pedestrian connection and has determined that the project must be bid and construction commenced by the end of February 2001, whereby it is necessary to use the quick take procedures set forth in Minn. Stat. § 117.042 and to acquire the herein described real property by no later than February 28, 2001.

12. The Port Authority seeks to acquire the fee simple absolute title to the property because such property is needed by the Port Authority for public use for purposes of the RiverCentre pedestrian connection; further, the acquisition of the Property and the construction of the RiverCentre pedestrian connection is for a public purpose and is needed to redevelop an unimproved parking lot which is marginal property, for the betterment of the Port Authority's downtown economic development district, and to facilitate the skyway connection of numerous buildings owned and/or financed by the Port Authority in its downtown economic development district.

13. All persons appearing of record or known to the Port Authority to be owners or claimants of an interest thereof,

including all persons or entities whom the Port Authority has been able by investigation and inquiry to discover, together with the nature of the interest of each as nearly can be ascertained, are as set forth below:

Names	Interest
Baillon Company	Fee Owner
Imperial Parking, Inc.	Tenant; parking lot operator
City of Saint Paul	Assessments, if any
Ramsey County	Unpaid taxes and assessments, if any are due

WHEREFORE, the Port Authority requests an Order of this Court approving the Port Authority's Petition and directing:

1. That such proceedings may be had as are provided by law in order that the Port Authority may acquire, by condemnation, the fee simple, absolute title to the real property legally described as follows:

> The Westerly 60 feet of Lot Two (2), Block Nineteen (19), Rice and Irvine's Addition to the City of Saint Paul, except that part conveyed in Book 944 of Deeds, page 511, according to the plat thereof on file and of record in the office of the County Recorder, including any and all vacated rights-of-way, easements, appurtenances, gaps, and overlaps, Saint Paul, Ramsey County, Minnesota;

2. That it be adjudged and determined that the real property sought to be taken is for a public use and that the taking of the real property from the Respondents herein is necessary and such as is authorized by law;

3. That three competent and disinterested persons and two alternates, who are residents of Ramsey County, Minnesota, be appointed as commissioners to ascertain and report the amount of damages that will be sustained by the Respondents as a result of the taking;

4. That the Court order and fix the time and place of the first meeting of the commissioners and set their compensation;

5. That the commissioners be directed and instructed by the Court to proceed according to law to make a fair and impartial assessment and award of all damages that will be sustained by the Respondents herein by reason of the taking and timely report the same to this Court;

6. That in all cases where, for any reason, it shall be doubtful to whom the award shall be paid, the payment shall be made to the Administrator of the Ramsey County District Court to be paid out by that office under the direction of the Court;

7. That pursuant to Minn. Stat. § 117.041, as amended, the Port Authority and its employees and agents are authorized to enter onto the real property described above following approval of this Petition, upon reasonable notice to the owners and occupants thereof, for the purpose of appraisals, surveys, tests, soil borings, inspections, and evaluations of the conditions present on such real property as the Port Authority may elect;

8. That pursuant to Minn. Stat. § 117.042, as amended, the transfer of title and the right of possession of said real property to the Port Authority shall be effective on the ninety-first day after the service upon Respondents of this Petition in Condemnation and Motion to Transfer Title and Possession under Minn. Stat. § 117.042; and

9. For such other relief as the Court may deem just and equitable.

Dated: November 22, 2000 BRIGGS AND MORGAN, P.A.

By /s/
Marc J. Manderscheid
Attorney Reg. 15166X
Lisa M. Agrimonti
Attorney Reg. No. 272474
W-2200 First National Bank Building
332 Minnesota Street
Saint Paul, Minnesota 55101
Telephone No. (651) 223-6600
Attorneys for Petitioner Port Authority of the City of Saint Paul

ACKNOWLEDGMENT REQUIRED BY MINN. STAT. § 549.211

The undersigned acknowledges that sanctions may be imposed under Minn. Stat. § 549.211.

Dated: November 22, 2000 s/ Marc J. Manderscheid

EXHIBIT A

The westerly 60 feet of Lot 2, Block 19, Rice and Irvine's Addition to Saint Paul, except that part conveyed in "944" Deeds 511. Ramsey County, Minnesota

Resolution No. 3818

RESOLUTION
OF THE
PORT AUTHORITY OF THE CITY OF SAINT PAUL

WHEREAS, the Port Authority has previously committed to contribute monies to the City of Saint Paul and Ramsey County for the connection of the RiverCentre with the downtown skyway system; and

WHEREAS, the City of Saint Paul has suggested that the Port Authority in lieu of its cash contribution undertake the acquisition of a small unimproved surface parking lot adjacent to the US West building on Fourth Street; and

WHEREAS, the acquisition of said property is necessary for the support of a skyway bridge from the Landmark Towers Building over Fourth Street and connection of the skyway system to the RiverCentre; and

WHEREAS, the property is located within the Port Authority's downtown economic development district; and

WHEREAS, staff has recommended that the Port Authority undertake the acquisition of this underutilized property for the betterment of the downtown economic development district and to facilitate the skyway connection of numerous buildings owned and or financed by the Port Authority in the downtown economic development district.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE PORT AUTHORITY OF THE CITY OF SAINT PAUL: That the acquisition of the surface parking lot located on Fourth Street directly across from the Landmark Towers as legally described in Exhibit A attached hereto is necessary and is in the best interest of the port district and the taxpayers thereof.

AND BE IT FURTHER RESOLVED that staff and legal counsel is hereby authorized and directed by the Board of Commissioners of the Port Authority of the City of Saint Paul

to enter into negotiations with the owner of said property for its acquisition.

AND BE IT FINALLY RESOLVED that in the event negotiations for the acquisition of said property are not fruitful, legal counsel is hereby authorized and directed to acquire said property in the name of the Port Authority pursuant to the Port Authority's powers of eminent domain.

Adopted: January 25, 2000

s/ W. [illegible]
Chair

Attested

s/ Kathy Hart
Secretary

Citation/Title
US CONST Amend. XIV-Full Text, CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPOINTMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

***23228 U.S.C.A. Const. Amend. XIV-Full Text**

UNITED STATES CODE ANNOTATED
CONSTITUTION OF THE UNITED STATES
AMENDMENT XIV--CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Current through P.L. 107-19, approved 7-10-01

AMENDMENT XIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPOINTMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers,

counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

***23229** Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Real Estate Division
140 City Hall *Phone: (651) 266-8850*
Saint Paul, MN 55102 *Fax:(651) 266-8855*

CITY OF SAINT PAUL
Norm Coleman, Mayor

February 2, 2000

Baillon Company
First National Bank Building
332 Minnesota Street Suite E 1404
Saint Paul, Minnesota 55102 1604

Subject: Acquisition of Property Rights for Improvements.

The City of Saint Paul has proposed improvements in the downtown area. The acquisition of property rights may be necessary to complete this task.

Property rights you or your company has an interest in may be affected by this improvement. A map showing your property and the proposed area affected is attached.

A Public Hearing is being scheduled before the Saint Paul City Council to hear the matter of proceeding with this acquisition of property rights needed for the improvement.

If City Council approves proceeding with the acquisition of these property rights, we will appraise the fair market value of said property rights.

If you have any questions, you may contact Right-of-Way Engineer Peter White or myself at 266-8850.

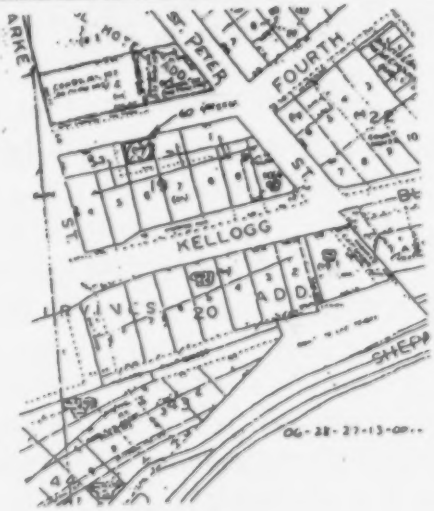
Sincerely,

/s/
Juan A. Ortiz
Real Estate Division

(18926BCo.Ltr1)

ST. PAUL CITY COUNCIL
PUBLIC HEARING NOTICE
PUBLIC IMPROVEMENT PROJECT
PROPERTY RIGHTS ACQUISITION

Baillon Company	City Council Ward # 1 Planning District # 17 File No. 18926
PURPOSE AND LOCATION	Acquire the property rights at 60 Fourth Street West for the construction of a pedestrian walkway.
HEARING	Public Hearings begin at 5:30 P.M. on Wednesday, February 23, 2000 in the Council Chambers, Third Floor of City Hall.
QUESTIONS	If you have questions or concerns, please call Juan A. Ortiz at 266-8850. For your convenience, City staff will be available the day of the Public Hearing to answer any last minute questions on this project until 4:00 P.M. in Room 140 City Hall.



NOTICE SENT: February 2, 2000
CITY OF ST PAUL
REAL ESTATE DIVISION
ROOM 140 CITY HALL
ST PAUL MN 55106

BEST AVAILABLE COPY

Department of Technology and Management Services
Real Estate Division
140 City Hall *Phone: (651) 266-8850*
Saint Paul, MN 55102 *Fax:(651) 266-8855*

CITY OF SAINT PAUL
Norm Coleman, Mayor

February 16, 2000

Baillon Company
First National Bank Building
332 Minnesota Street Suite E 1404
Saint Paul, Minnesota 55102 1604

Subject: Acquisition of Property Rights for Pedestrian Walkway Tunnel

It has been brought to our attention that the Saint Paul Port Authority intends to proceed with the acquisition of property rights necessary to construct the above mentioned pedestrian tunnel, for that reason the Public Hearing for the City of Saint Paul proceed with the acquisition of 60 Fourth Street West **will not** take place on Wednesday, February 23rd, 2000.

If you have any questions concerning the property rights being acquired, please contact Bill Morin of the Saint Paul Port Authority at (651) 224-5686.

Sincerely,

/s/
Juan A. Ortiz
Real Estate Division

(18926BCo.Ltr2)

Chapter 13. ACQUISITION OF PROPERTY AND IMPROVEMENT PROCEDURES

Sec. 13.01. Power to acquire property.

The city may acquire by purchase, gift, devise, condemnation or exchange, or in any other legal manner, in fee or such lesser estate as the council deems necessary, any property either within or without its corporate boundaries, needed by it for any public use or purpose.

Sec. 13.01.1. Disposal or diversion of park property.

Lands which may have been heretofore acquired by any means or which may hereafter be acquired by any means for park purposes shall not be diverted to other uses or disposed of by the city except in the following manner. "Park purposes" shall include, but not be limited to mean, playground, trail, parkways, open space and any other recreational purpose.

(A) The Saint Paul Parks Commission, or if no parks commission exists, then another committee established pursuant to section 3.01.8 of this Charter, shall be asked to review the proposed diversion or disposal and submit its recommendation to the city council.

(B) After receiving the recommendation of the commission or committee, a public hearing shall be conducted by the city council for the purpose of considering the proposal and the recommendation. Notice of the hearing shall be published at least ten (10) working days prior to the hearing, and all interested persons shall be given an opportunity to present their views.

(C) The council may, by resolution adopted by at least two-thirds of the total council, authorize the diversion or disposal in the event it is determined to be in the best interests of the public to do so. The council shall require that additional park lands be acquired to replace those lands diverted or disposed. Consideration shall be given to replacing park land within the same district planning council area and to replacing lands with similar lands to maintain the balance within the park system.

(D) The council shall obtain from a qualified independent appraiser an appraisal of the market value of the park lands to be diverted or disposed and in the event the city receives less than the appraised market value the council shall allocate funds from the capital budget to equal that deficiency.

(E) The net proceeds or funds received or allocated, and interest earned thereon, from the diversion or disposal of park lands shall be maintained in a separate fund and shall be used only for the purpose of acquiring additional park lands.

(F) All land acquired by the city by deed, dedication or otherwise, containing a restriction on the title which limits the city's use of the property for park purposes only, may not be disposed of by the city in the manner provided in this section.

(Ord. No. 17825, § 1, 5-2-91; C.F. No. 94-1339, § 1, 10-12-94)

Sec. 13.02. Power to make improvements.

The city shall have the power to make any and every type of improvement not forbidden by the laws of the state. An improvement on two (2) or more streets, or two (2) or more types of improvements in or on the same street or streets or different streets, may be included in one proceeding and conducted as one improvement.

Sec. 13.03. Eminent domain and improvement.

Proceedings for improvements and the acquisition of property by condemnation shall be as follows:

Sec. 13.03.1. Preliminary order.

(1) Improvements and acquisition shall originate upon petition of the property owners affected or upon the council's own initiative as the council may, by administrative ordinance, prescribe. Before adopting the final order provided herein, the council shall, by resolution entitled "preliminary order," set a time and place for a public hearing thereon twenty (20) days or more after the passage by the council and approval by the mayor or council override of a mayoral veto of the resolution.
(2) Not less than ten (10) days prior to the hearing, notice of the hearing shall be mailed to each known owner of the affected property at the owner's last known address.
(3) Failure to receive mailed or actual notice or any defects in the notice shall not invalidate the proceedings.

Editor's note--Section 13.03.1 amended by resolution adopted July 22, 1993, pursuant to Minnesota Statutes 1992, Section 410.12, approved by the voters at the general election conducted on November 2, 1993.

Sec. 13.03.2. Hearing--Final order.

(1) At the hearing, or at any adjournment thereof, the council shall hear all interested persons. It may thereafter discontinue, modify or adopt the proposal by a resolution entitled "final order."
(2) The "final order" shall state the extent and kind of improvement to be made, the property or interest to be condemned, the estate to be acquired and direct the proper

city officers to proceed with the improvement and/or the condemnation.

Sec. 13.03.3. Passage of title--Deposit.

(1) Should the council deem it necessary it may after the date of the "final order," direct by resolution the payment of a sum of money into the district court to secure compensation to the owner of the property or interest in property being condemned, which amount shall be fixed by the court in a sum not less than the true and full valuation of the property appropriated as fixed by the assessor and as finally equalized,
(2) The title to property or interest therein being condemned shall pass to the city upon payment of the sum of money hereunder into the court. Except when any interest retained by the owner includes the right of continued possession, the city shall thereupon have the right to enter immediately upon the property appropriated, demolish any structure thereon or therein and proceed with the construction of any public improvement proposed by it.

Sec. 13.03.4. Awards--Confirmation.

(1) Upon the issuance of a "final order," and in any other instance where a condemnation is acted by the council, the proper officers shall view the premises, and may subpoena and examine under oath any person relative to the value of the interest to be acquired by condemnation.
(2) After the view, the evidence shall be weighed, and the award of damages shall be fixed and reported to the council. The measure of damages shall be the fair market value of the property before the taking less the fair market value of the remainder, if any, after the taking. If a part of a tract of land is taken for an improvement, and the remainder is benefited by the improvement, and is to be assessed therefor, the amount of the assessment to be levied against the remainder

shall be offset against the award of damages. If the award exceeds the amount to be assessed against the remainder, the award shall be the difference. If the assignment against the remainder exceeds the award of damages, then the excess shall be levied against the property as an assessment.

(3) Upon receipt of the report, the council shall set a time and place for a public hearing. At that time it shall ratify and confirm the condemnation or taking, make an award of damages for the interest acquired, and determine the assessment, if any, against the property benefited by the improvement.

(4) Ten (10) days notice of the hearing shall be given by publication in the official paper. At least twenty (20) days prior to the hearing, the notice shall be served on all persons found in Saint Paul who have or claim any right, title, estate, lien or interest in the property to be condemned, in the manner provided in the district court rules of civil procedure for the service of summons. If such persons cannot be found in the city, or do not reside therein, the notice shall be served by registered mail addressed to the last known address of such persons twenty (20) days prior to the hearing.

If more than twenty-five (25) per cent of any tract is taken, the affected property owner or owners may be granted an allowance not to exceed one hundred fifty dollars ($150.00) or a larger amount as may be provided by administrative ordinance, on account of expenses for appraisal and legal services.

At the hearing, the council shall hear all interested persons, and thereafter shall by resolution ratify and confirm the taking of the interest deemed necessary for the improvement, adopt the assessment, if any, designate the date of possession by the city, and make an award of damages for the interest taken, indicating the persons entitled thereto.

Sec. 13.03.5. Appeals.

(1) Any person whose interest in property has been condemned or taken may appeal, or an appeal may be taken on his or her behalf, from the ratification and confirmation of the condemnation or from the award of damages or both. A written notice of appeal shall be filed with the city clerk within forty (40) days of the ratification, confirmation and award of damages,
(2) The written notice of appeal shall specify the name of the appellant, a description of the property in which the appellant has or claims an interest, the nature of the appellant's interest, and the objections the appellant has to the condemnation, or award, or both.
(3) Within ten (10) days after the notice of appeal has been filed with the city clerk, the notice of appeal shall be filed with the clerk of the district court:
(4) A person who does not file with the city clerk a written notice of appeal within the time specified, or does not file the notice of appeal with the clerk of the district court within the time specified, shall be forever barred from proceeding with an appeal and trial in that court, and the condemnation and award shall be final.

(Ord. No. 17665, § 9, 6-29-89)

Sec. 13.03.6. Trial.

(1) The appeal shall be tried in the district court as other civil cases, pursuant to the district court rules of civil procedure and shall have preference over all other civil cases.
(2) The property owner or the city shall be entitled to a jury trial as a matter of right.
(3) The amount of the award made by the council, and the resolution making the award, shall not be competent evidence

at the trial, nor admitted as any type of substantive evidence or impeachment.

Sec. 13.03.7. Marketable title.

When the condemnation and the award become final, the landowner shall provide the city with evidence of good and marketable title in the property.

Sec. 13.03.8. Interest.

(1) The damages awarded in condemnation proceedings shall bear interest at the rate of six (6) percent per annum from a day sixty (60) days after the date of the resolution of the council ratifying and confirming the taking and making the award of damages.
(2) Subject to the provisions of Minnesota Statutes, Section 117.42, the city may pay the award to the clerk of the district court for disbursement under the direction of the court in any of the following cases: (1) the place of residence of any party to whom an award of damages is made unknown; (2) he cannot be found within the city; (3) he is an infant or under legal disability; (4) he refuses to accept payment or to provide the evidence of title required by Section 13.03.7; or (5) the city attorney certifies that it is doubtful as to whom the award should be paid. Unless an appeal is taken, the deposit with the clerk shall be deemed a payment of the award, no interest thereafter shall run against the city, and title to the property or interest therein shall pass, if it has not passed previously.
(3) If an appeal be taken, any person or persons taking the appeal may demand of the city a partial payment of the award, up to three-quarters thereof, pending the final determination, and it shall be the duty of the city to pay such person or persons the amount so demanded upon their presentment of evidence of good and marketable title in the property. The partial payment shall be deducted from the

total award of damages finally allowed in the appeal, and if partial payment is in excess of the final award, the difference shall be recoverable in the same manner as any civil action. No interest will be allowed on the amount of partial payment after the date of payment.

Sec. 13.04. Sale of real property.

The council shall have the power to dispose of real property owned by the city in the manner provided by administrative ordinance. The net cash proceeds of any transaction concerning the property shall be used to retire any outstanding indebtedness incurred by the city in the acquisition or improvement of the property. Any remaining net proceeds shall be used to finance other improvements in the capital improvement budget, as authorized in Section 10.05 of this Charter, or to retire any other existing bonded indebtedness.

Sec. 13.05. Vacation of streets, alleys and public grounds.

The council may, by resolution adopted by an affirmative vote of at least five (5) of its members, vacate any street, alley or public grounds, or part thereof, within the city. Such resolution shall be adopted only after affected property owners have been given an opportunity to be heard. Notice of the hearing shall be published in the official newspaper of the city and mailed to the owners of each parcel which abuts the street, alley or public grounds or part thereof, proposed to be vacated at least twenty (20) days in advance thereof. The vacation shall otherwise be made upon the terms and conditions, and in the manner, provided by administrative ordinance. The council may condition any vacation upon compensation being paid to the city. A notice of completion of the proceedings shall be filed with the proper officers in accordance with law.

Editor's note--Section 13.05 added by Ord. No. 15139, C.F. 258814, approved by the city council June 29, 1972, in accordance with Minnesota Statutes, Section 410.21.

[Excerpt from page 1 of RiverCentre/Coop Agree]

RIVERCENTRE PEDESTRIAN LINK COOPERATIVE AGREEMENT

THIS AGREEMENT (AGREEMENT) is entered into as of the 23rd day of May, 2000 by and among Ramsey County, a political subdivision of the State of Minnesota (the COUNTY), the City of Saint Paul, a home rule charter city and a municipal corporation of the State of Minnesota (the CITY), the Port Authority of the City of Saint Paul, a body corporate and politic organized pursuant to Chapter 469 of the laws of Minnesota (the PORT AUTHORITY), Capital City Properties, a Minnesota nonprofit corporation (CCP), and the Saint Paul Convention and Visitors Bureau Foundation, a Minnesota nonprofit corporation (CVB FOUNDATION).

WITNESSETH:

WHEREAS, the parties hereto are desirous of the CITY and the COUNTY acquiring property for and designing and constructing a pedestrian connection between the RiverCentre Complex and the existing skyway system in Landmark Tower (the PROJECT) in the CITY as an extension of the RiverCentre Complex; and

WHEREAS, the CITY's participation in the PROJECT is (i) to contribute to the PROJECT the sum of $2,250,000, representing $2,000,000 proceeds from the Housing and Redevelopment Authority of the City of Saint Paul, Minnesota Sales Tax Revenue Bonds (Civic Center Project), Series 1993 (the SALES TAX BONDS), and $250,000 in earnings on such bond proceeds (the CITY CONTRIBUTION), (ii) to contribute $150,000 already paid to consultants for conceptual design work, for a total contribution of $2,400,000, and (iii) to co-own the PROJECT and to lease the COUNTY'S share of the PROJECT from the

COUNTY, and (iv) to review and approve Project Documents; and

* * *

receive approval of the MPFA Loan; or (c) rejection by the CITY of any PROJECT documents pursuant to Section 2.3 of this agreement; then the CITY, COUNTY or PORT may, prior to commencement of construction, individually or jointly in writing terminate this Agreement, and except as expressly provided in Section 1.10 of this Agreement no party shall have any further rights or obligations under this Agreement.

ARTICLE 2. PORT DUTIES

2.1 ACQUISITION OF REAL PROPERTY. The PORT shall acquire, on behalf of the CITY, all permanent and temporary real property ownership and casement rights not owned or controlled by the CITY as of April 1, 2000, necessary for construction and operation of the PROJECT. Upon acquisition of such rights the PORT shall promptly transfer the acquired rights to the CITY, except for temporary rights acquired for construction purposes, which shall be retained by the PORT.

The property rights necessary for operation of the PROJECT' shall collectively be referred to herein as the CORRIDOR. The PORT may pay acquisition costs from the PORT AUTHORITY contribution and the CCP CONTRIBUTION which the PORT may retain in its possession and control for acquisition purposes, or may remit the contributions to the COUNTY pursuant to Article 1.1 hereof. If the PORT retains the PORT AUTHORITY CONTRIBUTION and CCP CONTRIBUTION to pay acquisition costs, after such acquisition it shall rernit all monies including interest thereon from the date of this agreement not needed for

acquisition of the property rights to the COUNTY pursuant to Section [illegible]

* * *

[Excerpt from page 22 of RiverCentre/Coop Agree]

5.3 WAIVER. All waivers of the provisions of this Agreement must be in writing and signed by the party to be charged with the waiver.

5.4 ADDITIONAL DOCUMENTS. Each of the parties, without further consideration, agrees to execute such additional documents as may reasonably be necessary to carry out the purposes and intent of this Agreement and to fulfill the obligations of the respective parties hereunder.

5.5 HEADINGS. The headings in this Agreement are inserted for convenience only and shall not constitute a part hereof.

5.6 PARTIES. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns. No party hereto may assign its rights or obligations hereunder without the prior written consent of all other parties hereto.

5.7 COUNTERPARTS. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.

5.8 RELATIONSHIP OF PARTIES. No partnership, joint venture, or principal-agent is established among the parties under this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

RAMSEY COUNTY

By: /s/_____
Rafael Orgega, Chair
Board of Commissioners

(2)

Supreme Court, U.S.
FILED
FEB 21

No. 01-1066

In the Supreme Court of the United States

BAILLON COMPANY,

Petitioner,

v.

PORT AUTHORITY OF THE CITY OF SAINT PAUL,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE MINNESOTA SUPREME COURT

BRIEF OF RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether a Minnesota government entity acquiring title to property in its own name, with its own money and under condemnation procedures set forth in the state statute creating the entity, should instead be required to use the condemnation procedures of another Minnesota government entity that cooperated in the public project to be built on the condemned property?

CORPORATE DISCLOSURE STATEMENT

Port Authority of the City of Saint Paul is a body politic and corporate organized and existing pursuant to Minn. Stat. § 469.049.

Baillon Company is a privately held Minnesota corporation.

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CONSTITUTIONAL PROVISIONS INVOLVED

Section 7 of Article I to the Minnesota Constitution provides in relevant part:

> No person shall be . . . deprived of . . . property without due process of law.

MINN. CONST. ART I, § 7.

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1257(a) provides in relevant part:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where . . . any title, right, privilege, or immunity is specifically set up or claimed under the Constitution or the treaties or statutes of . . ., the United States.

28 U.S.C. § 1257(a) (2000).

Minn. Stat. § 117.042 provides in relevant part:

> Whenever the petitioner shall require title and possession of all or part of the owner's property prior to the filing of an award by the court appointed commissioners, the petitioner shall, at least 90 days prior to the date on which possession is to be taken, notify the owner of the intent to possess by notice served by certified mail and before taking title and possession shall pay to the owner or deposit with the

court an amount equal to petitioner's approved appraisal of value.

Minn. Stat. § 117.042 (2000).

Minn. Stat. § 117.055 provides in relevant part:

In all cases a petition, describing the desired land, stating by whom and for what purposes it is proposed to be taken, and giving the names of all persons appearing of record or known to the petitioner to be the owners thereof shall be presented to the district court. . . . Notice of the objects of the petition and of the time and place of presenting the same shall be served at least 20 days before such time of presentation upon all persons named in the petition as owners . . . .

Minn. Stat. § 117.055 (2000).

Minn. Stat. § 117.075 provides in relevant part:

Upon proof being filed of the service of such notice, the court, at the time and place therein fixed or to which the hearing may be adjourned, shall hear all competent evidence offered for or against the granting of the petition, regulating the order of proof as it may deem best. If the proposed taking shall appear to be necessary and such as is authorized by law, the court by an order shall appoint three disinterested commissioners, and at least two alternates, residents of the county, to ascertain and report the amount of damages that will be sustained by the several owners on account of such taking.

Minn. Stat. § 117.075 (2001).

Minn. Stat § 469.049 provides in relevant part:

> A port authority is a body politic and corporate with the right to sue and be sued in its own name.
>
> A port authority carries out an essential governmental function of the state when it exercises its power . . . .

Minn. Stat. § 469.049, subd. 2 (2000).

Minn. Stat. § 469.055 provides in relevant part:

> A port authority may acquire under eminent domain property of any kind within the port district needed by it for public use . . . .

Minn. Stat. § 469.055, subd. 8 (2000).

RESPONDENT'S STATEMENT OF THE CASE

This case involves the acquisition for public use of a twelve-stall surface parking lot in downtown Saint Paul, Minnesota (the "Property"). The Property is to be used for the construction of a stair tower, elevator, and the beginning of a tunnel which will continue to and connect the existing downtown Saint Paul skyway system with the RiverCentre Complex.[1] (Petitioner's Appendix "PA" 14-15, 25). For several years, the Port Authority of the City of Saint Paul (the "Port Authority"), the City of Saint Paul (the "City"), Ramsey County (the "County"), the Saint Paul Convention and

[1] The RiverCentre Complex is a publicly-owned facility located on the southwest edge of the Saint Paul downtown which now includes the Xcel Arena (home of the Minnesota Wild NHL franchise), Touchstone Energy Place (a convention center), and the Roy Wilkins Auditorium.

Visitors Bureau Foundation (the "CVB Foundation"), Capital City Properties, and others conducted several studies and considered many alternatives. (PA 14). These studies and considerations culminated in the decision by the Port Authority to acquire the Property under its powers of eminent domain pursuant to state statute. (PA 41-42; *see* Minn. Stat. § 469.055, subd. 8 (2001)).

A. Factual Background

In September 1996, the Saint Paul City Council (the "City Council") adopted a resolution supporting an enclosed, climate-controlled, continuous walkway to link the major downtown hotels and the Saint Paul Civic Center, now known as the RiverCentre. (PA 3). The details on how to accomplish the connection remained to be determined.

On December 22, 1997, the Saint Paul City Council adopted Resolution No. 97-1551, in which it determined that "the creation of a continuous climate-controlled connection to the downtown skyway system would substantially increase the attractiveness of the RiverCentre as a potential convention location, thereby increasing convention business and enhancing the economic vitality of the downtown business district." (Resolution No. 97-1551, Ct. App. Appendix at 285). The City Council further noted how in 1996, Ramsey County government officials expressed an interest in having such a pedestrian connection and that "the Saint Paul Port Authority has expressed interest in funding the skyway link through the Landmark Tower block and across Fourth Street to the edge of the US West property." (*Id.*).

The City Council considered the results of a 1997 study that analyzed the Fourth Street and Kellogg Boulevard alternatives and the alternative designs from a design charrette. (PA 9). The Council noted: "as a result of the design charrette, a modification to the 'Fourth Street' alternative has been suggested that extends the tunnel

eastward from Fourth and Market Streets to the middle of the block of Fourth Street between Saint Peter and Market Streets, and connected directly to the proposed Fourth Street skyway." (Ct. App. Appendix at at 285). The City Council then approved "the 'Fourth Street' alternative with the tunnel extension to mid-block along Fourth Street between Saint Peter and Market Streets" and resolved "that the Office of Financial Services, the Department of Planning and Economic Development, the Port Authority, the Civic Center Authority, the Visitors and Convention Bureau and the Capital City Partnership collaborate with other public and private beneficiaries for commitments of approximately $10,000,000 for the modified 'Fourth Street' alternative." (Ct. App. Appendix at 286).

On September 1, 1999, the Saint Paul City Council adopted Preliminary Order No. 99-843, scheduling a public hearing for 5:30 p.m. on October 6, 1999, to consider "the matter of constructing the RiverCentre Connection between RiverCentre and the existing skyway system at Landmark Tower, which includes a new skyway across 4th Street and tunnel along the south side of 4th St. from mid-block between St. Peter and Market Streets to the Rice Park entrance of RiverCentre." (Preliminary Order No 99-843, Ct. App. Appendix at 289-90). The public hearing was held on October 6, 1999, due notice having been given as prescribed by the City Charter. (Final Order No 99-970, Ct. App. Appendix at 287-88). At the public hearing, the Council "heard all persons, objections and recommendations pertaining to said proposed improvement and has fully considered the same." (*Id.* at 288). Thereafter, the City Council adopted Final Order 99-970, resolving that the improvement be made for "constructing the RiverCentre Connection between RiverCentre and the existing skyway system at Landmark Tower." (*Id.*)

On January 25, 2000, the Board of Commissioners of the Port Authority adopted Resolution No. 3818, a certified copy

of which was attached to the Port Authority's Petition in Condemnation and Motion for Transfer of Title and Possession Under Minn. Stat. § 117.042 as Exhibit "A" (the "Resolution"). (PA 41-42). In the Resolution, the Port Authority noted its previous commitment to contribute monies for the connection of the RiverCentre with the downtown skyway system and how "the City of Saint Paul has suggested that the Port Authority in lieu of its cash contribution undertake the acquisition of a small unimproved surface parking lot adjacent to the US West building on Fourth Street." (PA 41). The Commissioners also noted how the Property was located within the Port Authority's downtown economic development district and its "staff has recommended that the Port Authority undertake the acquisition of this underutilized property for the betterment of the downtown economic development district and to facilitate the skyway connection of numerous buildings owned and/or financed by the Port Authority in the downtown economic development district." (PA 21, 41).

Port Authority Resolution No. 3818 concludes as follows:

> NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE PORT AUTHORITY OF THE CITY OF SAINT PAUL: That the acquisition of the surface parking lot located on Fourth Street directly across from the Landmark Towers as legally described in Exhibit A attached hereto [the "Property"] is necessary and is in the best interest of the port district and the taxpayers thereof.
>
> AND BE IT FURTHER RESOLVED that staff and legal counsel is hereby authorized and directed by the Board of Commissioners of the Port Authority

of the City of Saint Paul to enter into negotiations with the owner of said property for its acquisition.

AND BE IT FINALLY RESOLVED that in the event negotiations for the acquisition of said property are not fruitful, legal counsel is hereby authorized and directed to acquire said property in the name of the Port Authority pursuant to the Port Authority's powers of eminent domain.

(PA 41-42).

The following week, the City of Saint Paul's Department of Technology and Management Services sent Baillon a notice that the City had proposed improvements in the downtown area and that acquisition of Baillon's property may be necessary to complete this task. (PA 45-47). The notice advised Baillon that a public hearing was being scheduled before the Saint Paul City Council for February 23, 2000, and provided the names of contact persons if Baillon had any questions. (PA 45-47).

A week later, on February 16, 2000, the same city department sent a second notice to Baillon. (PA 48). The subject of this notice was "Acquisition of Property Rights for Pedestrian Walkway Tunnel." (*Id.*). The notice stated:

It has been brought to our attention that the Saint Paul Port Authority intends to proceed with the acquisition of property rights necessary to construct the above mentioned pedestrian tunnel, for that reason the Public Hearing for the City of Saint Paul to proceed with acquisition of 60 Fourth Street West **will not** take place on Wednesday, February 23, 2000.

> If you have any questions concerning the property rights being acquired, please contact Bill Morin of the Saint Paul Port Authority at (651) 224-5686.

(PA 48) (emphasis in original). Baillon never raised an issue regarding the cancellation of the proposed February 23, 2000 public hearing until the district court hearing on January 25, 2001, more than eleven months after the fact. (PA 20).

In May 2000, the Port Authority, the City, the County, Capital City Properties, and the CVB Foundation entered into the RiverCentre Pedestrian Link Cooperative Agreement (the "Agreement"). (PA 15, 25, 58-62). The Agreement provides for specific responsibilities and obligations upon each of the parties in order to acquire property for, design, and construct the proposed pedestrian connection between the RiverCentre Complex and the existing skyway system in Landmark Towers. (PA 58-62).

The specific duties of the Port Authority, the City, and the County were detailed in the Agreement. (PA 58-62). Among the Port Authority's duties were to acquire all permanent and temporary real property and easement rights necessary for construction and operation of the project; to select a design consultant/architect and enter into a contract with such consultant/architect for design, engineering and preparation of construction plans, specifications, and public bidding documents; to conduct all tests required to proceed with the project; and to obtain in its name all required local permits and approvals. (PA 60-61) The Agreement specifically provides that "[n]o partnership, joint venture, or principal agent is established among the parties under this Agreement." (PA 62) (emphasis added).

The Port Authority subsequently had the Baillon property appraised. (PA 4). The Port Authority made an offer to Baillon to acquire the Property for a sum in excess of the amount of its approved appraisal of value, which figure was

$360,000. (PA 4, 16, 26). The Port Authority's offer was rejected.[2] (*Id.*).

B. Proceedings Before The Ramsey County District Court

On November 22, 2000, the Port Authority filed with the Ramsey County District Court its Petition in Condemnation and Motion for Transfer of Title and Possession under Minn. Stat § 117.042 (the "Petition"). (PA 6, 33-42). The Petition, Notice of Hearing on Petition in Condemnation and Motion for Transfer of Title and Possession Under Minn. Stat. § 117.042, Notice of Intent to Take Possession Under Minn. Stat. § 117.042, proposed Order Granting Petition and Appointing Commissioners, and proposed Order Authorizing Payment or Deposit and Transferring Title were served on all respondents on November 29, 2000. (PA 27) A hearing was scheduled before the district court for January 26, 2001. (PA 14, 24).

In late December 2000, Baillon's attorneys served a Data Practices Act request pursuant to Minn. Stat. §13.01 *et seq.*, upon the Port Authority. Baillon sought all documents relating to the RiverCentre Connection project. (Baillon's Brief to Minnesota Court of Appeals at 19). In response to Baillon's Data Practices Act request, the Port Authority produced all documents in its possession regarding the acquisition of the Baillon property. (*Id.*).

Having been advised that Baillon may be challenging the Port Authority's proposed acquisition, on January 24, 2001, the Port Authority filed and served its Memorandum of Law in Support of Its Petition in Condemnation and Motion for Transfer of Title and Possession Under Minn. Stat. § 117.042.

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[2] Despite Baillon's representation to the Court, Baillon **never** raised the issue of a public hearing during negotiations. It was, and continues to be, a monetary issue.

On the afternoon before the scheduled hearing, Baillon submitted a nine-page, single-spaced letter brief in opposition to the taking and use of the quick take procedure by the Port Authority. (Ct. App. Appendix at 31-38). The brief was accompanied by the Affidavit of James L. Forman, to which were attached eleven exhibits, comprising approximately one inch of paper. (Ct. App. Appendix at 40-240). A hearing lasting over an hour was held on January 26, 2001, before the Honorable John S. Connolly, Judge of District Court. (Baillon's Informal Brief to Minnesota Court of Appeals at 5). Additional exhibits were introduced during the hearing. (PA 4).

At the hearing, Baillon, who was represented by counsel, argued the same three points that it had briefed. First, that the Port Authority should have followed the City Charter and held a public hearing before condemning the Property. Second, that the Port Authority's Resolution was unnecessary, arbitrary and capricious. Finally, that the taking of the Property was premature. (PA 19, 29). The district court ultimately issued Orders granting the Petition, and authorizing payment or deposit and transferring of title. (PA 13-22, 23-32). The Orders were accompanied by memoranda addressing, and rejecting, all of Baillon's arguments. (PA 19-22, 29-32).

C. The Decision Of The Minnesota Court of Appeals

Baillon filed its notice of appeal with the Minnesota Court of Appeals on February 28, 2001. Baillon simultaneously moved the Minnesota Court of Appeals for expedited consideration. The motion was denied by Order dated March 13, 2001.

Baillon submitted a twenty-five page informal letter brief to the Minnesota Court of Appeals on March 14, 2002. In its informal brief, Baillon again argued that the Port Authority was the agent of the City and therefore should have been

required to follow the condemnation procedures in the City Charter. (Baillon's Informal Letter Brief to Minnesota Court of Appeals at 9-15). Baillon also argued that the district court erred in not denying the Port Authority's Petition in Condemnation on grounds of the taking being premature and unnecessary. (*Id.* at 15-23). The Port Authority submitted its brief in opposition on April 13, 2001. (Port Authority's Brief on the Merits). Oral argument was heard on May 17, 2001. The Minnesota Court of Appeals squarely addressed all of the issues raised by Baillon before affirming the district court's Orders in an unpublished decision. (PA 2-12).

D. Decision Of The Minnesota Supreme Court

Baillon petitioned the Minnesota Supreme Court for discretionary review of the court of appeals' decision. The basis for the appeal was that the court of appeals' decision denied Baillon's due process rights, by not affording Baillon with a public hearing before the City Council, and not allowing a further evidentiary hearing at the district court. (Baillon Petition for Review at 1-5). The Minnesota Supreme Court declined to review the same issues Baillon now raises before this Court. (PA 1).

REASONS FOR DENYING THE PETITION

This Court does not have jurisdiction over this matter. Baillon's assertion of jurisdiction under 28 U.S.C. 1257(a) is misguided because this is the first and only time during these proceedings that Baillon has raised a due process claim under the United States Constitution. Due process under the United States Constitution was never considered by the district court or the Minnesota Court of Appeals. Jurisdiction in this Court is therefore lacking.

Should the Court determine it does have jurisdiction over this matter, it should deny Baillon's petition as a matter of

discretion. Baillon does not provide this Court with "compelling reasons" to decide an "important question of federal law." Sup. Ct. R. 10. Baillon is asking this Court to review the Minnesota Court of Appeals' interpretation of the Minnesota constitution, Minnesota statutes, and a question of fact under state law. The Minnesota Court of Appeals found that Baillon's due process rights were not violated in any way, because Baillon received all of the process due under the Minnesota constitution and the Minnesota statutes. The court of appeals did not address a federal due process question because Baillon never raised one. The Minnesota Court of Appeals also fully considered the issue of whether the Port Authority was acting as the City's agent, and found that as a matter of state law, the Port Authority was not acting as an agent for the City when the Port Authority acquired the Property. In so holding, the Minnesota Court of Appeals did not decide an "important question of federal law that has not been, but should be, settled by this Court." Sup. Ct. R. 10(c). An agency relationship is a question of fact under Minnesota law. *White v. Boucher*, 322 N.W.2d 560, 566 (Minn. 1982).

I. THIS COURT DOES NOT HAVE JURISDICTION TO HEAR PETITIONER'S CLAIM UNDER 28 U.S.C. § 1257

This Court's certiorari jurisdiction over decisions from state courts derives from 28 U.S.C. § 1257, which provides that "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where . . . any title, right, privilege, or immunity is specifically set up or claimed under the Constitution or the treaties or statutes of...the United States." 28 U.S.C. § 1257(a) (emphasis added). To the extent Baillon had a claim that it was denied its right to due process of law under the United States Constitution, such claim was waived by failing to raise it below. At no stage in

the proceedings has Baillon ever framed the due process issue as a federal question under the due process clause of the Fourteenth Amendment to the United States Constitution.

Baillon has generically referred to its "due process rights" at the state district court, the Minnesota Court of Appeals and the Minnesota Supreme Court. As does the United States Constitution, the Minnesota constitution states that "No person shall be . . . deprived of . . . property without due process of law." Minn. Const. Art. I, § 7. "[I]t is settled that such an averment [to due process of law], making no reference to the Constitution of the United States, and asserting no express rights thereunder, is solely referable to the state Constitution, which, in this instance, has a due process clause, and affords no basis whatever for invoking the jurisdiction of this court." *Bowe v. Scott*, 233 U.S. 658, 664-65 (1914). Baillon has thus waived the federal question it now asserts because this is the first time it has raised a claim of due process specifically under the United States Constitution.

Where a petitioner has not raised a federal question in the state courts, the Supreme Court may exercise jurisdiction under 28 U.S.C. § 1257 if the federal issue was resolved by the state court, despite not being specifically raised by the appellant. *See Illinois v. Gates*, 462 U.S. 213, 218 n.1 (1983). Baillon's argument in the instant case, however, was based in its entirety upon the due process clause of the Minnesota constitution. The Minnesota Court of Appeals never referenced the United States Constitution when addressing Baillon's due process claim. The Minnesota Court of Appeals referred only to the Minnesota constitution when deciding that Baillon had not been denied due process of law. (PA 6). The Minnesota Supreme Court also did not address the issue when declining review. Quite simply, this Court does not have jurisdiction over a matter never framed as a federal question nor considered by the state court.

II. PETITIONER HAS PRESENTED NO COMPELLING REASON FOR GRANTING PLENARY REVIEW AS THERE IS NO IMPORTANT QUESTION OF FEDERAL LAW AT ISSUE

Even if the Court determines it has jurisdiction over Baillon's claim under 28 U.S.C. § 1257(a), it should exercise its discretion and deny the petition. A petition for writ of certiorari is only granted for compelling reasons. Sup. Ct. R. 10. Although Baillon never refers to Supreme Court Rule 10(c), it apparently relies on that rule as a reason for the Court to grant its petition. Rule 10(c) states that the Court will consider granting a petition for writ of certiorari where "a state court . . . has decided an important question of federal law that has not been, but should be, settled by this Court." Sup. Ct. R. 10(c). Baillon has not presented this Court with an "important question of federal law," and certainly not a question that should be "settled by this Court."

Baillon states it has presented "an important question" that needs to be resolved by this Court. (Petition at 13). While the "import" of the question is debatable, not even Baillon argues that the question is "federal" is nature. Baillon, for the first time now asserts that they were denied due process under the United States Constitution. Disregarding the untimely nature of Baillon's assertion, Baillon was not denied due process under the United States Constitution because it received the process it was due under the United States Constitution.

Due process under the United States Constitution is satisfied by notice and an opportunity to be heard. *See Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950). The same is required under the Minnesota Constitution's due process clause. *See Alton v. Wabedo Township*, 524 N.W.2d 278, 281 (Minn. Ct. App. 1994). Notice and an opportunity to be heard were precisely what

Baillon received. To the extent Baillon argues it was entitled to more process (through a public hearing before the City Council) it is relying upon the Minnesota Constitution, Minnesota statutes and the Saint Paul City Charter, all of which are interpreted by the courts of Minnesota. The district court and the Minnesota Court of Appeals interpreted these very documents in determining that Baillon was not denied its due process rights. The Minnesota Supreme Court did not deem the lower court's decision worthy of further review.

Despite Baillon's statement to the contrary, (Petition at 11), this is a case where a government authority has followed its condemnation procedures and those procedures have been found constitutional. The district court found that "[t]he procedures used by the Port Authority are in accord with the statutes governing the acquisition of real property through condemnation." (PA 17). These "procedures" have been found constitutional by the Minnesota Supreme Court. *See Port Auth. of Saint Paul v. Fisher*, 269 Minn. 276, 132 N.W.2d 183 (1964).

Baillon's due process argument is really nothing more than a quarrel with the Minnesota Court of Appeals' factual finding that there was no agency relationship. Baillon's entire argument in its petition is predicated upon its desire that this Court reverse the lower courts and hold, as a matter of fact under Minnesota law, that the Port Authority was an agent of the City. The Court should decline Baillon's invitation to grant review based upon an alleged erroneous factual finding under state law.

III. THE MINNESOTA COURT OF APPEALS FOUND THAT BAILLON RECEIVED ALL THE PROCESS TO WHICH IT WAS DUE

Under Minnesota law, to acquire title to the Property by eminent domain, the Port Authority had to establish that it

had the power of eminent domain, the proposed taking was for a valid public use or public purpose, the Property was necessary to further a public use or public purpose, and, since it was seeking to take the Property pursuant to Minn. Stat. § 117.042, the use of the quick take procedure was reasonable. *See City of Duluth v. State*, 390 N.W.2d 757 (Minn. 1986). In *City of Duluth*, the court held that "[c]ondemnation is clearly a deprivation of property requiring pre-deprivation notice and opportunity to be heard. This requirement is satisfied by the petition to condemn." 390 N.W.2d at 771. In this case, Baillon received almost two months prior notice of the hearing; Baillon was allowed to review all of the Port Authority's documents regarding the project; Baillon submitted documents by affidavit and argued that a public hearing was required, and that the taking was both unnecessary and premature. Baillon presented oral argument on all of these issues before the district court. Plainly, Baillon had all the notice and opportunity to be heard required by either the Minnesota or United States Constitution.

The Port Authority has the legal right to "acquire under eminent domain property of any kind within the port district needed by it for public use...." *See* Minn. Stat. § 469.055, subd. 8 (2000). "The port authority shall adopt a resolution describing the property and stating its intended use and the necessity of the taking." *Id.* The Port Authority may also exercise the right of eminent domain to acquire property which is necessary for carrying out an economic development project. *See* Minn. Stat. § 469.058, subd. 4 (2000). Further, the Minnesota Legislature has specifically vested condemning authorities with the ability to acquire real property on an expedited basis.[3]

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[3] "Whenever the petitioner shall require title and possession of all or part of the owner's property prior to the filing of an award by the court appointed commissioners, the petitioner shall, at least 90 days prior to the date on which possession is to be taken, notify the owner of the intent to possess . . . ." Minn. Stat. § 117.042 (2000) (the "quick take" statute).

A. Petitioner Received Notice of the Port Authority's Intent to Acquire the Property Through Use of its Eminent Domain Powers

Baillon received the notice to which it was entitled under due process of law. Minn. Stat. § 117.055, which sets forth the petition and notice procedures, states:

> In all cases a petition, describing the desired land, stating by whom and for what purposes it is proposed to be taken, and giving the names of all persons appearing of record or known to the petitioner to be the owners thereof shall be presented to the district court. . . . Notice of the objects of the petition and of the time and place of presenting the same shall be served at least 20 days before such time of presentation upon all persons named in the petition as owners . . . .

Minn. Stat. § 117.055 (2000).

On November 22, 2000, the Port Authority filed with the Ramsey County District Court its Petition in Condemnation and Motion for Transfer of Title and Possession under Minn. Stat § 117.042 (the "Petition"). (PA 6). The Petition, Notice of Hearing on Petition in Condemnation and Motion for Transfer of Title and Possession Under Minn. Stat. § 117.042, Notice of Intent to Take Possession Under Minn. Stat. § 117.042, proposed Order Granting Petition and Appointing Commissioners, and proposed Order Authorizing Payment or Deposit and Transferring Title were served on all Baillon on November 29, 2000. (*Id.*).

Notice of the hearing was served on November 29, 2000, well in advance of the twenty-day minimum required by Minn. Stat § 117.055. The notice of the hearing advised Baillon of the date and time of the hearing, the place,

including room number, the name of the judge to hear the proceeding, the purpose of the proceeding and a legal description of the subject property. (Notice of Hearing on Petition in Condemnation dated November 29, 2000).[4]

B. Petitioner Received An Opportunity to be Heard

Baillon also received its due process right of an opportunity to be heard. Minnesota Statutes § 117.075 provides in relevant part:

> Upon proof being filed of the service of such notice, the court, at the time and place therein fixed or to which the hearing may be adjourned, shall hear all competent evidence offered for or against the granting of the petition, regulating the order of proof as it may deem best. If the proposed taking shall appear to be necessary and such as is authorized by law, the court by an order shall appoint three disinterested commissioners, and at least two alternates, residents of the county, to ascertain and report the amount of damages that will be sustained by the several owners on account of such taking.

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[4] Baillon knew in February 2000 that the Port Authority was likely to be acquiring its property. (*See* letter dated February 16, 2000) (Pet. App. A-48). This letter, authored by the City's Department of Technology and Management Services, states that the "Port Authority intends to proceed with the acquisition of property rights" and provides the name [Bill Morin] and phone number of the person to contact at the Port Authority if Baillon had any questions. (*Id.*) Moreover, Baillon is not an unsophisticated property owner, having been involved in previous eminent domain cases. *See State by Humphrey v. Baillon Co.*, 503 N.W.2d 799 (Minn. Ct. App. 1993); *State by Humphrey v. Baillon Co.*, 480 N.W.2d 673 (Minn. Ct. App. 1992). Prior to even serving the Petition in Condemnation, the Port Authority had negotiations with Baillon and made an offer to buy the Property, which Baillon rejected. (Pet. App. A-4).

Minn. Stat. § 117.075 (2000).[5]

In preparation for the hearing, Baillon's attorneys served a Data Practices Act request upon the Port Authority, seeking all documents relating to the RiverCentre Connection project in late December 2000. (Baillon's Informal Brief to Minnesota Court of Appeals at 11 n.2 & 19). In response to Baillon's Data Practices Act request, the Port Authority produced all documents in its possession regarding the acquisition of the Baillon property. (*Id.*).

Having been advised that Baillon may be challenging the Port Authority's proposed acquisition, on January 24, 2001, the Port Authority filed and served its Memorandum of Law in Support of Its Petition in Condemnation and Motion for Transfer of Title and Possession Under Minn. Stat. § 117.042. On the afternoon before the hearing, Baillon submitted a nine-page, single-spaced letter brief in opposition to the taking and use of the quick take procedure by the Port Authority. (PA 4, 7). The letter brief was accompanied by the Affidavit of James L. Forman, to which were attached eleven exhibits, comprising approximately one inch of paper. (Ct. App. Appendix at 40-240). The district court's hearing lasted over an hour. (Baillon's Informal Brief to Minnesota Court of Appeals at 5). Additional exhibits were introduced during the hearing. (PA 4).

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[5] The "quick-take" procedures require:

> Whenever the petitioner shall require title and possession of all or part of the owner's property prior to the filing of an award by the court appointed commissioners, the petitioner shall, at least 90 days prior to the date on which possession is to be taken, notify the owner of the intent to possess by notice served by certified mail and before taking title and possession shall pay to the owner or deposit with the court an amount equal to petitioner's approved appraisal of value.

Minn. Stat. § 117.042 (2000).

District courts have broad discretion in determining the procedures to be used at the hearing on a condemnation petition. *See In re Condemnation by Minneapolis Cmty. Dev. Agency of Certain Lands* ("*MCDA I*"), 439 N.W.2d 708, 711 (Minn. 1989). The Minnesota Court of Appeals addressed Baillon's due process argument by stating:

> The district court was not required to grant any additional hearing. Baillon did not show, either at the hearing in district court or in any submissions with this court, how allowing witnesses to testify at the hearing would have provided any compelling evidence against the propriety of the taking. Because we find that the district court hearing was sufficient for Baillon to present evidence contesting the necessity of the taking and that the district court was not required to grant Baillon's motion for an additional evidentiary hearing or trial, Baillon's due process rights were not violated.

(PA 7) (citations omitted).

The Minnesota Court of Appeals carefully considered the facts and case law in reaching its conclusion. Baillon had pre-hearing access to all the Port Authority's documents. (Baillon's Informal Brief to Minnesota Court of Appeals at 19). Baillon submitted a brief in opposition which was accompanied by an affidavit with eleven attached exhibits. (Ct. App. Appendix at at 31-38, 40-240). Baillon presented oral argument to the district court. (PA 4). As noted by the Minnesota Court of Appeals, "Baillon's due process rights were not violated." (PA 7).

C. Petitioner Was Not Entitled To A Public Hearing Because The Minnesota Court of Appeals Determined As A Matter Of Fact That The Port Authority Was Not Acting As The City's Agent

The question Baillon argues to the Court (whether the Port Authority should be required to follow the City's procedures where it is acting as the City's agent), while novel, is not before the Court because under Minnesota law, the Port Authority was not the City's agent.

Whether an agency relationship exists is a question of fact, and the party alleging the existence of the agency has the burden of proof. *White v. Boucher*, 322 N.W.2d 560, 566 (Minn. 1982). "Generally, an agency relationship is based upon consent by one person that another shall act on his behalf and be subject to his control." *Frank v. Winter*, 528 N.W.2d 910, 914 (Minn. Ct. App. 1995) (citations omitted). This right of control by the principal over the agent is an element necessary to support a finding that an agency relationship exists. *Teeman v. Jurek*, 312 Minn. 292, 299, 251 N.W.2d 698, 702 (1977) (citing *Jurek v. Thompson*, 308 Minn. 191, 198, 241 N.W.2d 788, 791 (1976) (right of control is "the critical element.")). Baillon makes no reference to this essential element of an agency relationship and never has. In the absence of any persuasive evidence of right of control "there is no agency as a matter of law." *Thompson*, 241 N.W.2d at 793; *see also Vieths v. Ripley*, 295 N.W.2d 659, 664 (Minn. 1980) (agency relationship does not exist unless there are facts showing that the alleged principal had the right to control the agent's conduct in performing the services).

The Port Authority was not subject to the City's control. The Saint Paul Port Authority was created by the Minnesota legislature. *See* Minn. Stat. § 469.049, subd. 1 (2000). "A port authority is a body politic and corporate with the right to sue and be sued in its own name." Minn. Stat. § 469.049, subd. 2 (2000). "A port authority carries out an essential

governmental function of the state when it exercises its power . . . ." *Id.* (emphasis added). The Port Authority is not an agent of the City. The document Baillon primarily relies upon for making its agency argument, the Agreement, expressly rejects the establishment of an agency relationship between any of the parties: "No partnership, joint venture, or principal-agent is established among the parties under this Agreement." (PA 62).

Not only did the parties express their intent not to form an agency relationship, but, as the Minnesota Court of Appeals found, the facts do not support a finding of an agency relationship between the Port Authority and the City. (PA 11). The Port Authority adopted its own Resolution on January 25, 2000, four months prior to signing the Agreement. (PA 41). The terms of the Port Authority's Resolution specifically direct that "in the event negotiations for the acquisition of the property are not fruitful, legal counsel is hereby authorized and directed to acquire said property in the name of the Port Authority pursuant to the Port Authority's power of eminent domain." (PA 42) (emphasis added). As the Minnesota Court of Appeals stated:

> [T]he evidence shows that the port authority had an independent interest in the acquisition of the property and that it controlled both the fact and the method of the acquisition. The property is located in the port authority's economic development district and the port authority, as owner of major downtown hotels, would benefit from a pedestrian link in downtown Saint Paul. If the port authority was unsuccessful in attempting to purchase the property, it was to acquire the property in its own name through its own power of eminent domain and with its own funds. The substantial evidence on this issue in the record compels the conclusion that the port

> authority was not serving as the city's agent in this taking.

(PA 11).

The district court and the Minnesota Court of Appeals addressed the factual issue of whether an agency relationship exists between the Port Authority and the City. Both found that the Port Authority was not an agent of the City; that the Port Authority was acting in its own interest; and the Port Authority would be spending its own money to provide Baillon with just compensation. (PA 11). These findings rested upon the Minnesota courts' interpretations of the Minnesota constitution, Minnesota statutes, Minnesota case law and the City Charter. There is no reason for this Court to disturb those findings.

CONCLUSION

Baillon has waived the federal question it now claims is before this Court. Further, the Minnesota Court of Appeals correctly applied Minnesota law in determining that the Port Authority was not the agent of the City and that Baillon had received the process to which it was due in this condemnation proceeding. Because Baillon raises no issue worthy of certiorari review, its petition should be denied.

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